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JANICE COOK  
ADMINISTRATOR

June 3, 2008

Chambers of the Honorable Naomi R. Buchwald  
United States Courthouse  
500 Pearl Street, Room 2270  
New York, NY 10007

Re: Jalloh v. Wendel  
Docket No. 07 Civ. 4091 (NRB)  
Our File No. Y8236

Dear Judge Buchwald:

Enclosed herewith is plaintiff's opposition to defendant's motion for summary judgment, as well as plaintiff's cross-motion for summary judgment on the issues of liability and memorandum of law. Pursuant to Your Honor's Order dated May 21, 2008, these documents were due on June 4, 2008, and have already been sent to defendant via Federal Express Overnight Delivery.

Thank you for your courtesy in this matter.

Respectfully submitted,

BUDIN, REISMAN, KUPFERBERG & BERNSTEIN, LLP

*Christina M. Rieker*  
CHRISTINA M. RIEKER, ESQ.

Enclosures

cc: Mark A. Solomon, Esq.  
Law Offices of Harvey & Vandamme  
90 Broad Street, Suite 2202  
New York, NY 10004

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendant.

X

**NOTICE OF  
CROSS MOTION FOR  
SUMMARY JUDGMENT**

ECF CASE

Index No.: 07 Civ. 4091(NRB)

Hon. Judge Naomi R. Buchwald

X

PLEASE TAKE NOTICE, that upon the annexed affirmation of CHRISTINA M. RIEKER, ESQ., dated June 3, 2008, and upon all of the pleading and proceedings heretofore had herein, the undersigned will move this Court before the Honorable Judge Naomi R. Buchwald at the Courthouse located at 500 Pearl Street, New York, NY 10007, on June 20, 2008, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to FRCP 56 granting summary judgment in favor of plaintiff, ABOUBACAR JALLOH on the issue of liability; together with such other, further and different relief as the Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
June 3, 2008

Yours, etc.

*Christina M. Rieker*  
CHRISTINA M. RIEKER, ESQ. (1566)  
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TO:  
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Attorneys for Defendant  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendant.

**AFFIRMATION  
IN SUPPORT OF CROSS-  
MOTION AND IN  
OPPOSITION TO  
DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

Index No.: 07 Civ. 4091(NRB)

-----X

CHRISTINA M. RIEKER, ESQ., an attorney admitted to practice law in the Courts of the State of New York hereby affirms under the penalties of perjury:

I am an associate of the firm of BUDIN, REISMAN, KUPFERBERG & BERNSTEIN, LLP, attorneys for the plaintiff herein and as such I am fully familiar with the facts and circumstances of the above entitled matter and submit this affirmation in support of plaintiff's motion for an Order pursuant to FRCP 56 granting summary judgment in his favor. I further submits this affirmation in opposition to defendant WENDEL's motion dated May 16, 2008 seeking an Order for summary judgment pursuant to FRCP 56 and N.Y. Insurance Law 5102. This cross-motion is being filed upon leave of the Court pursuant to the Order dated May 21, 2008 (Order annexed hereto as **Exhibit "A"**).

**PART I**

**PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY**

a. **Introduction**

The within action stems from a rear end collision, which occurred on August 6, 2006, a Sunday at approximately 12:00 a.m. At that time plaintiff was the operator of a 1997 Lincoln bearing the State of New York license plate number 62109LA that was rear ended by a 2005

Honda Element owned and operated by defendant, THOMAS P. WENDEL. Annexed hereto as **Exhibit "B"** is a copy of the Police Report.

Said accident occurred when defendant suddenly crashed into the rear of plaintiff's car while plaintiff was stopped at the red light on Seventh Avenue and its intersection of West 135<sup>th</sup> Street, in the County, City and State of New York.

Suit was commenced on or about March 12, 2007, issue was joined on or about May 21, 2007 (A copy of the Pleadings are annexed hereto collectively as **Exhibit "C"**).

b. **Deposition Testimony of the Defendant Thomas P. Wendel**

Deposition of the defendant, Thomas Wendel was conducted on February 8, 2008. (Annexed hereto as **Exhibit "D"** is a copy of Mr. Wendel's examination before trial transcript, in its entirety). Mr. Wendel testified that he resides in Connecticut, and prior to the accident, he was at a concert on Roosevelt Island (See Ex. "D", pg. 5, 10). Mr. Wendel testified that the road he was traveling on before he struck plaintiff's vehicle was dry and level. He testified that he struck plaintiff's stopped vehicle in the rear when he took his eyes off the road. Relevant testimony follows:

Pg. 14, lines 16-25

Q: The contact involving your vehicle and the Lincoln Town car how would you describe that, heavy, medium, light, or something else?

A: Medium.

Q: When the contact occurred was the Lincoln Town car moving or standing still?

A: I believe it was standing still.

Q: Just before this contact occurred did you see the Lincoln Town car?

A: I don't remember.

Defendant testified that he told the responding police officers that he rear-ended plaintiff's vehicle. Relevant testimony follows:

Pg. 19, lines 8-15

Q: What did you tell them?

A: I told them I rear ended the other car.

Q: Other than, "I rear ended the other car," did you give them any other explanation as to that event?

A: I told them I took my eyes off the road and I didn't see the car.

Pg. 21, lines 5-9

Q: What was the event or thing that distracted you as you've indicated before?

A: I was just looking around. The change in the scenery since the last time I had been there.

Mr. Wendel's testimony establishes that the accident occurred as a result of his own negligent operation of his vehicle, and plaintiff did not contribute to the accident in any way. As there is no evidence to contradict Mr. Wendel's version of how the accident took place, but is in fact supported by the entire evidence of record, there are no issues of fact for a jury to consider.

c. **Police Accident Report**

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The Court is respectfully referred to the police accident report, which narrates how the accident occurred based upon the interview of the involved parties (see Exhibit "B"). The report states as follows: "At T.P.O above listed vehicle number 1 and vehicle number 2 were both traveling south bound on Jerome Ave. at the intersection of W. 182<sup>nd</sup> St. Veh. #2 did strike veh. #1 from the rear. Police officers did not witness accident."

d. **Summary Judgment Should be Granted as there are no Triable Issues of Fact Presented to Refute Mr. Wendel's Negligence.**

In the instant case Mr. Wendel readily admits he struck Mr. Jalloh's vehicle in the rear (See Police Report, Exhibit "B" and defendant's EBT transcript, Exhibit "D"). It is clear from Mr. Wendel's testimony that he failed to have his attention before him and maintain a proper lookout while operating his motor vehicle. It is submitted that only one conclusion can be drawn from the

totality of the facts in this case, that the defendant THOMAS P. WENDEL's negligent operation of his vehicle caused him to rear-end plaintiff's vehicle.

**WHEREFORE**, it is respectfully requested that this application be considered for an Order granting summary judgment on the issue of liability to the plaintiff, and setting this matter down for an assessment of damages, together with such other, further and different relief as this Court deems just and proper.

## **PART II**

### **DEFENDANT FAILED TO MEETS HIS BURDEN OF PROVING *PRIMA FACIE* LACK OF SERIOUS INJURY.**

#### **a. Defendant relies on only one expert who performed an incomplete evaluation of Mr. Jalloh's condition.**

Dr. Robert S. April, the defense neurologist, *examined the plaintiff on April 2, 2008, one year and eight months post accident*. Dr. April's opinion was based solely on a single examination of the plaintiff (Dr. April's report is annexed to defendant's moving papers as Exhibit "E"). Dr. April only rendered an opinion as to Mr. Jalloh's neurological condition. He opined, "the accident of record did not produce a neurological diagnosis, limitation, disability or need for further intervention." (See defendant's Exhibit "E"). However, Mr. Jalloh's injuries are generally orthopedic in nature, and Dr. April is not qualified to render an expert opinion as to his orthopedic injuries or limitations. As such, defendant failed to meet his burden of establishing that Mr. Jalloh did not suffer a serious injury within the meaning of Insurance Law § 5102(d).

Dr. April failed to review plaintiff's treating physicians' records or reports. He only reviewed a one-page, unaffirmed record from Dr. Nelson. Defendant's practice of picking and choosing the records he offers for review is grounds for denial of his motion. A doctor cannot

perform a complete examination and prepare an accurate report without reviewing all of the material medical evidence. As such, Dr. April's opinion should be given little to no weight in determining this summary judgment motion.

Dr. April's report failed to discuss the diagnoses made by the plaintiff's physicians; the course of treatment plaintiff received when it was made available to him and the significance of procedures performed by plaintiff's physicians and whether they were medically necessary or whether the results indicate causal relation to the accident. The defendant's doctor conducted only a cursory examination of the plaintiff and failed to present any substantial medical proof of lack of serious injury. Thus, defendant is not entitled to summary judgment, as he has failed to meet his burden, only offering the lacking report of neurologist, Dr. April, especially in light of the fact that plaintiff's injuries are largely orthopedic in nature.

b. Defendant's accusation that plaintiff did not sustain a serious injury which prevented him from performing substantially all of his daily activities for no less than 90 of the first 180 days after the accident is not based on admissible evidence.

With respect to the 90/180-day serious injury category, defendant has failed to meet his initial burden of proof and, therefore, has not shifted the burden to plaintiff to lay bare his evidence with respect to this claim. The IME report relied upon by defendant states only that plaintiff can perform his daily activities, *most of the time*, and, further, the IME took place *well* beyond the expiration of the 180-day period. Defendant provides no admissible evidence supporting his opinion that plaintiff was able to perform his daily activities for 90 days following the accident, and is therefore not entitled to summary judgment with respect to this category of serious injury.

In the event that the Court determines that defendant had met his burden, plaintiff has offered sufficient prove to rebut defendant's argument. Plaintiff testified that he underwent an intensive course of physical therapy three times per week for approximately four months after the accident (See Exhibits "F" and "G", plaintiff's Affidavit, and plaintiff's EBT transcript,

respectively). He stated that since the accident, he attempted on several occasions to return to his previous job as a taxi driver. However, he has not been able to work on a regular, consistent basis because of his neck and back pain. He has only worked about a total of two months since the accident, which was nearly two years ago (**Exhibit "F"**). Since the accident he has suffered severe back pain, making it difficult for him to kneel, which he is required to do to pray, which he used to do five times a day. This has had a very negative impact on his life, as religion and prayer are the most important aspects of his life. Mr. Jalloh feels that the distraction from prayer caused by the pain is affecting his life in a negative manner (See **Exhibit "F"**).

**MR. JALLOH'S COMPLAINTS ARE SUPPORTED BY OBJECTIVE TESTS.**

**a. Positive MRI Findings**

Plaintiff underwent MRI testing of the cervical spine on August 16, 2006 and the lumbar spine on September 6, 2006. Annexed hereto as **Exhibit "H"** are MRI reports and a signed affirmation of the radiologist who read the films. The MRI reports are summarized as follows:

The MRI of the Cervical Spine revealed:

- Straightening of cervical lordosis;
- Central disc herniations at C3-C4 and C5-C6, deforming the dural sac, with the latter nearly in contact with the cervical cord; and
- Bulging disc at C4-C5 with flattening of the dural sac.

The MRI of the Lumbar Spine revealed:

- Bulging discs from L4 through S1, associated with bilateral foraminal narrowing at L4-L5.

**b. Quantitative and Qualitative Findings of Plaintiff's Treating Physicians**

Dr. Dina Nelson, a pain management specialist and plaintiff's treating physician, treated the Mr. Jalloh from August 10, 2006 through December 7, 2006 (Affirmation of Dr. Nelson is

annexed hereto as **Exhibit "I"**). Mr. Jalloh received physical therapy treatments for four months, consisting of electrical stimulation, massages, and the application of hot and cold packs, all to the lower back and neck.

On initial physical examination on August 10, 2006, Mr. Jalloh presented with complaints of neck pain, and mid to low back pain, and frontal headaches. **Examination of the cervical spine revealed severe limitation in all planes with diffuse muscle spasm in the upper trapezius muscles, levator scapulae, and SCM and tenderness in the cervical paraspinal.** Examination of the thoracolumbar spine revealed tenderness in the lower thoracic spinous processes up to the upper lumbar spine. Flexion was limited to 50 degrees (90 degrees is normal<sup>1</sup>) and lateral flexion was limited to 10 degrees (25 degrees is normal). Dr. Nelson diagnosed: (1) cervical sprain/strain; (2) thoracolumbar sprain/strain; and (3) post traumatic headaches (**Exhibit "I"**).

On examination of September 21, 2006, Mr. Jalloh had continued complaints of neck pain and low back pain with complaints of sharp pain radiating down both legs. **Examination of the cervical spine revealed moderate restrictions in range of motion in all planes and bilateral trapezius and cervical paraspinal muscle spasm.** Examination of the lumbar spine revealed moderate restriction and flexion bilateral lumbar paravertebral spasm, and a positive straight leg raise bilaterally (**Exhibit "I"**).

**On November 2, 2006, examination of the cervical spine revealed a decrease in lateral rotation to 60 degrees bilaterally (80 degrees is normal), and lateral flexion to 20 degrees bilaterally (45 degrees is normal).** There was bilateral upper trapezius muscle spasm and tenderness in the lower lumbar paravertebrals. Based on a reasonable degree of medical

certainty, and on Mr. Jalloh's history and clinical examinations, Dr. Nelson opined that a direct causal relationship exists between Mr. Jalloh's injuries and the accident of August 6, 2006 (See Exhibit "I").

Dr. Mark S. McMahon, an orthopedic surgeon, examined plaintiff on May 14, 2008, and offered an opinion as to his condition, disability, and current symptoms. Dr. McMahon reviewed all of Mr. Jalloh's treating physician's reports, and the MRI and x-ray reports. **Upon evaluation, Dr. McMahon opined that Mr. Jalloh is currently unable to work due to his neck and back problems.** Mr. Jalloh still has pain radiating down his legs, as well as bilateral leg weakness. Mr. Jalloh's neck and back pain were reported to be worse with bending and lifting. Mr. Jalloh reported waking up at night with neck and back pain, and worsening pain with prolonged sitting, standing, and walking (See Exhibit "E").

On physical examination of the cervical spine, Mr. Jalloh could flex to 2 degrees with pain (normal limit is 60) and extend to 0 degrees with pain (nl 50). He could bend to the left and right 0 degrees with pain (nl 40). On physical examination of the lumbar spine, Mr. Jalloh could flex to 2 degrees with pain (nl 90) and could extend to 0 degrees with pain (nl 30). He could bend to the left and right 0 degrees with pain (nl 20). He had decreased sensation in his left lower extremity and had a positive straight leg raising sign bilaterally (Exhibit "E").

Dr. McMahon diagnosed (1) cervical disc herniations at C3-4 and C5-6 deforming the dural sac and bulging disc at C4-5 with flattening of the dural sac and (2) lumbar spine bulging disc at L4-5 with flattening of the dural sac with bilateral foraminal encroachment, and L5-S1 bulging disc with flattening of the epidural fat. He opined that this diagnoses occurred as a result of the August 6, 2006 accident (Ex. "E").

<sup>1</sup> American Academy of Orthopedic Surgeons Standards

Dr. McMahon opined that Mr. Jalloh's prognosis for recovery is poor and his condition is permanent. He stated that Mr. Jalloh's condition interferes with his quality of life and his activities of daily living, nearly two years after the accident. He opined that Mr. Jalloh is unable to work as a taxi driver because of his injuries, and requires a multilevel cervical discectomy and fusion using instrumentation and bone graft, as well as an L4-S1 decompression and fusion using instrumentation and bone graft (Exhibit "E").

**c. Plaintiff's Deposition Testimony and Affidavit**

Mr. Jalloh's deposition was conducted on February 8, 2008 (A copy of plaintiff's Examination Before Trial transcript is annexed to moving papers as Exhibit "G"). He described the accident, injuries, and limitations in his signed and notarized affidavit, annexed hereto as Exhibit "F".

Mr. Jalloh testified that on August 8, 2006, he was struck from behind by defendant's vehicle. He described the impact as 'heavy' (pg. 37). Mr. Jalloh testified that he saw a doctor the next day for pain in his neck, lower back, and down his legs. He immediately began a four-month course of physical therapy treatments three times per week (Ex. "G", pgs. 38, 40, 43).

Mr. Jalloh stated in his affidavit that he attempted to return to his job as a taxi driver, but was only able to work on a few occasions due to his severe neck and back pain and restriction in range of motion. He is not currently working. Mr. Jalloh also stated that his back pain makes it very difficult for him to kneel to pray, which he used to do five times per day, as his religion required. He finds the pain very distracting, which has negatively impacted his daily prayer ritual, to his chagrin, as religion is the most important aspect of his life (See Ex. "F").

**CONCLUSION**

This Court should deny defendant's motion and rule in favor of the plaintiff. The proponent of a summary judgment motion must make a *prima facie* showing of its entitlement to judgment as

a matter of law, tendering sufficient evidence. By submitting the lacking report of Dr. April and the unaffirmed one-page medical report of Dr. Nelson, defendant has clearly failed to meet this burden. However, should this Court find that the defendant has met his burden; plaintiff has set forth sufficient evidence to raise a triable issue of fact under §5102(d).

Issues of credibility and probativeness should not be decided by motion. That being the case, it is respectfully requested that plaintiff be permitted to present her expert testimony at trial to counter the medical proof offered by defendant. Moreover, plaintiff should be permitted to subpoena defendant's doctor for in-court testimony relevant to his examination findings. In sum, the plaintiff has shown that the methodology of testing and results has sufficient indicia of medical reliability such that it is appropriate to present this case to a jury.

**WHEREFORE**, affirmant respectfully requests that the within motion for summary judgment based upon N.Y. Insurance Law 5102 be denied, and plaintiff's cross motion for summary judgment on the issue of liability be granted, and this matter set down for a date set certain on the matter of damages, together with such other, further, and different relief as to this Court seems just and proper.

Dated: New York, New York  
June 3, 2008

Christina M. Rieker  
CHRISTINA M. RIEKER, ESQ.

**ATTORNEY CERTIFICATION PURSUANT TO 22NYCRR 130-1.1a**

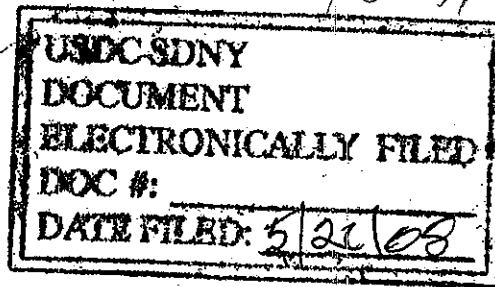
Pursuant to 22 NYCRR 130-1.1a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief, and after reasonable inquiry, the contentions contained in the annexed document(s) are not frivolous.

Dated: June 3, 2008

Christina M. Rieker  
CHRISTINA M. RIEKER, ESQ.

## EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
ABOUBACAR JALLOH,

Plaintiff,

ORDER

CR

- v -

07 Civ. 4091 (NRB)

THOMAS P. WENDEL,

Defendant.

-----X  
NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE

**WHEREAS** the trial in this matter is currently scheduled to commence on June 10, 2008; and

**WHEREAS** defendant filed a motion for summary judgment on May 16, 2008 and plaintiff has sought leave to file a cross-motion; it is hereby

**ORDERED** that plaintiff's brief in opposition to defendant's motion for summary judgment and in support of its cross-motion for summary judgment is due on June 4, 2008, defendant's reply and answering brief is due June 13, and plaintiff's reply brief on its cross-motion is due June 20, 2008; and it is further

**ORDERED** that the trial in this matter shall commence on August 11, 2008 unless the Court's trial calendar permits an earlier trial.

Dated: New York, New York  
May 20, 2008

  
\_\_\_\_\_  
NAOMI REICE BUCHWALD  
UNITED STATES DISTRICT JUDGE

A copy of the foregoing Order has been mailed on this date to the following:

**Attorney for Plaintiff**

Adam S. Bernstein, Esq.  
Budin, Reisman, Kupferberg & Bernstein  
112 Madison Avenue, 2nd Floor  
New York, NY 10016-7416

**Attorney for Defendant**

Mark A. Solomon, Esq.  
Harvey & Vandamme  
90 Broad Street, Suite 2202  
New York, NY 10004

## EXHIBIT B

New York State Department of Motor Vehicles

**POLICE ACCIDENT REPORT (NYC)**

MV-104AN (7/01)

AMENDED REPORT

Case 1:07-cv-04091-NRB Document 15 Filed 06/05/2008 Page 17 of 82

New York State Department of Motor Vehicles

POLICE ACCIDENT REPORT (NYC)

MV-104AN (7/01)

Precinct

046

Accident No.

CHABO 1128

Complaint  
Number

AMENDED REPORT

1 Accident Date

Month Day Year Day of Week Military Time  
08 07 2006 MONDAY 0115

No. of Vehicles

No. Injured

No. Killed

Not Investigated at Scene  
Accident Reconstructed

Left Scene  
Police Photos  
 Yes  No

2 VEHICLE 1

VEHICLE 1 - Driver License ID Number

337 231 135

State of Lic.

State of Lic.

Driver Name - exactly as printed on license

JALLOH, ABOUBACAR

VEHICLE 2 - Driver License ID Number

232762213

CT

Address (Include Number & Street)

188 E CLARK PLACE

Driver Name - exactly as printed on license

WENDEL THOMAS, P

Apt. No.

City or Town

BRONX

State

Zip Code  
NY 10452

City or Town

DANBURY

State Zip Code  
CT 06810

3 Date of Birth

Month Day Year

Sex

Unlicensed

No. of Occupants

Public Property Damaged

Name exactly as printed on registration

NEW TUXEDOPARK UNINSURED CAR W/

Month Day Year

Sex

Date of Birth

Month Day Year

Address (Include Number & Street)

31 RTE 17 STE 16

Name exactly as printed on registration

WENDEL THOMAS, P

Month Day Year

City or Town

TUXEDOPARK

Address (Include Number & Street)

120 MAIN ST

Apt. No. Haz. Mat. Code Released

4 Plate Number

621096A

State of Reg.

Vehicle Year & Make

Vehicle Type

Ins. Code

5 Plate Number

5510AV

State of Reg.

Vehicle Year & Make

Vehicle Type

Ins. Code

Ticket/Accident Number(s)

Violation Section(s)

6 Check if involved vehicle is:

more than 95 inches wide;  
 more than 34 feet long;  
 operated with an overweight permit;  
 operated with an overdimension permit.

7 VEHICLE 1 DAMAGE CODES

Box 1 - Point of Impact

8 8

Box 2 - Most Damage

8 L

E

1 Enter up to three more Damage Codes

3

4

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C

E

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Vehicle By

Towed:

To

7 VEHICLE 2 DAMAGE CODES

Box 1 - Point of Impact

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Box 2 - Most Damage

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E

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Enter up to three more Damage Codes

3

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17 DEMOLISHED

15 TRAILER

18 NO DAMAGE

16 OVERTURNED

19 OTHER

14 UNDERCARRIAGE

17 DEMOLISHED

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A I N V O L V E D	1	1	2	B	H3	M	—	—	8	—	—	—	—	JALLOH, ABOUBACAR WENDEL, THOMAS	—
B	2	1	3	I	SQ	M	—	—	6	—	—	—	—	—	—
C															
D															
E															
F															
Officer's Rank and Signature					Tax ID No.	NCIC No.	Precinct	Post/Sector	Reviewing Officer	Date/Time Reviewed					
Print Name in Full	STEPHEN SWEET				940407	03030	C46	34							

## EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendant.

Index No.: 13120/07  
3/21/07

X Plaintiff designates Bronx  
County as the place of trial.

**SUMMONS**

The basis of venue is:  
Plaintiff's residence

Plaintiff resides at:  
108 East Clark Place  
County of Bronx

X

**To the above named Defendant**

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within (20) twenty days after the service of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within (30) thirty days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
March 12, 2007



ADAM S. BERNSTEIN, ESQ.  
BUDIN, REISMAN, KUPFERBERG & BERNSTEIN, LLP  
Attorneys for Plaintiff  
Office and P.O. Address  
112 Madison Avenue, 2<sup>nd</sup> Floor  
New York, New York 10016-7416  
(212) 696-5500  
Our File # Y8236

Defendant's Address:

**THOMAS P. WENDEL**  
120 Main Street  
Danbury, CT 06810

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
ABOUBACAR JALLOH,

VERIFIED COMPLAINT

Plaintiff,

-against-

Index # 13120/07

THOMAS P. WENDEL,

Defendant.

-----X

Plaintiff, by his attorneys BUDIN, REISMAN, KUPFERBERG & BERNSTEIN, LLP, as and for a cause of action allege upon information and belief as follows:

1. That this action is brought pursuant to the provisions of the New York State Comprehensive Motor Vehicle Insurance Reparations Act and plaintiff has complied with all of the conditions thereof.
2. That plaintiff sustained serious injuries as defined in §5102(d) of the Insurance Law of the State of New York.
3. That by reason of the foregoing, plaintiff is entitled to recover for non-economic losses as are not included within the definition of "basic economic loss" as set forth in §5102(a) of the Insurance Law of the State of New York.
4. That plaintiff is a "covered person" as defined in §5102(j) of the Insurance Law of the State of New York.
5. That this action falls within one or more of the exceptions as set forth in CPLR §1602.
6. Upon information and belief, that at all of the times and places hereinafter mentioned, defendant was the owner of a certain motor vehicle bearing State of Connecticut license plate No. 551UAV.

7. Upon information and belief, that at all of the times and places hereinafter mentioned, defendant controlled the aforesaid motor vehicle.

8. Upon information and belief, that at all of the times and places hereinafter mentioned, defendant maintained the aforesaid motor vehicle.

9. Upon information and belief, that at all of the times and places hereinafter mentioned, defendant operated the aforesaid motor vehicle.

10. Upon information and belief, that at all of the times and places hereinafter mentioned, defendant was operating the aforesaid motor vehicle with the knowledge, permission and consent of the owner thereof.

11. That at all of the times and places hereinafter mentioned, plaintiff was operating a certain motor vehicle bearing State of New York plate number 62109LA.

12. That at all times and places hereinafter mentioned, 182nd Street and Jerome Avenue, in the County of Bronx, City and State of New York, were public roadways and/or thoroughfares.

13. That on or about August 6, 2006, at or about the intersection of 182nd Street and Jerome Avenue, in the County of Bronx, City and State of New York, there was contact between the defendant's motor vehicle and plaintiff's motor vehicle.

14. That the said accident and the injuries and damages to the plaintiff resulting therefrom were caused solely and wholly by reason of the negligence, carelessness and recklessness of the defendant in the ownership, operation and control of his motor vehicle, in that he failed to have and keep the same under reasonable and proper control; in that he caused, allowed and permitted his said motor vehicle to run into and violently collide with the rear of plaintiff's stationary motor vehicle; in that he failed to observe and/or heed the presence of

plaintiff's stationary motor vehicle lawfully stopped upon the public roadway pursuant to a red traffic signal light; in that he failed to observe and/or heed the traffic signals and/or controls then and there in operation; in that he failed to bring his motor vehicle under control in time to avoid the collision; in that he failed to have his attention before him; in that he failed to look; in that he failed to see; in that he operated and controlled his motor vehicle at a fast and excessive rate of speed under the circumstances and conditions then and there prevailing; in that he failed to provide and/or make prompt and timely use of adequate and efficient brakes and steering mechanisms; in failing to apply the brakes of his motor vehicle or to take other proper and appropriate evasive action in time to avoid running into and violently colliding with the plaintiff's motor vehicle; in operating the aforesaid motor vehicle in an unreasonable and imprudent manner; in that he operated and controlled his motor vehicle in reckless disregard for the safety of others, and the plaintiff in particular; in that he violated the statutes, ordinances, rules and regulations in the cases made and provided; in that he was inattentive to his duties wherein had he been attentive to his duties the accident and ensuing injuries could have and would have been avoided; in that he failed to act as a reasonable and prudent person could have and would have under the circumstances and conditions then and there prevailing; in that he operated and controlled his motor vehicle in such a willful, wanton and grossly culpable manner as to be liable for damages and punitive damages; in that he acted in reckless disregard for the safety of others, and the plaintiff in particular; and in that he failed to take all necessary and proper means and precautions to avoid the said accident.

15. That as a result of the negligence of the defendant, plaintiff sustained injuries to various parts of his head, body, limbs and nervous system and, upon information and belief,

VERIFICATION

The undersigned, being an attorney duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury:

That I am one of the attorneys for the plaintiff in the within action; that I have read and know the contents of the foregoing complaint, and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true.

This verification is made by affirmation and not by plaintiff herein because the plaintiff is not presently within the county wherein affirmant maintains an office.

This verification is based on information furnished by plaintiff in this action and information contained in affirmant's file.

Dated: New York, New York  
March 12, 2007

  
\_\_\_\_\_  
ADAM S. BERNSTEIN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

X Index No. 13120/07

ABOUBACAR JALLOH,

Plaintiff,

VERIFIED ANSWER

-against-

**DEFENDANT DEMANDS  
TRIAL BY JURY**

THOMAS P. WENDEL,

Defendants.

X

Defendant, THOMAS P. WENDEL, by and through his attorneys, the Law Offices of Patrick J. Maloney, as and for an answer to the complaint of the plaintiff, alleges as follows upon information and belief:

**FIRST:** Denies each and every allegation contained in Paragraphs "2", "14" and "15" of the Complaint.

**SECOND:** Denies each and every allegation contained in Paragraphs "3" and "4" and respectfully refers all questions of law therein to the Court for resolution.

**THIRD:** Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs "6", "7", "8", "9", "10", "11", "12" and "13" of the complaint.

**FOURTH:** Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs "1" and "5" and respectfully refers all questions of law therein to the Court for resolution.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

**FIFTH:** The amount of any judgment or award against this answering defendant shall be reduced by the amount of plaintiff's comparative fault and the comparative fault of any adverse party.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

**SIXTH:** Service of process was improper and as a consequence of the foregoing, the complaint should be dismissed in all respects.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

**SEVENTH:** That any damages otherwise recoverable by the plaintiff shall be diminished in the proportion which the failure of the plaintiff(s) to wear seat belts bears to the culpable conduct which caused the damages and/or injuries alleged.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

**EIGHTH:** The action is barred by reason of the plaintiff's failure to sustain a serious personal injury as defined by Section 5102 of Article 51 of the Insurance Law.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

**NINTH:** That in the event of any judgment or verdict on behalf of the plaintiff, the defendant is entitled to a set-off verdict with respect to the amounts of any payments made to the plaintiff for medical and other expenses prior thereto.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

**TENTH:** That plaintiff assumed the risk of any injuries which plaintiff may have sustained at the time and place set forth in the Complaint herein.

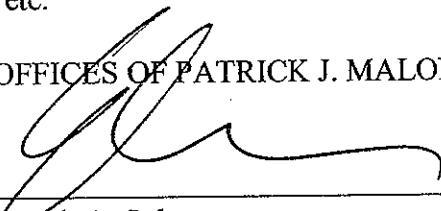
**WHEREFORE**, defendant demands judgment of this court dismissing the complaint in all respects and granting defendant such other, further or different relief as the Court may deem just and proper.

Dated: New York, New York  
May 21, 2007

Yours, etc.

LAW OFFICES OF PATRICK J. MALONEY

By:

  
Mark A. Solomon  
Attorneys for Defendant  
THOMAS P. WENDEL  
90 Broad Street – Suite 2202  
New York, New York 10004  
(646) 428-2650

TO: BUDIN, REISMAN, KUPFERBERG & BERNSTEIN, LLP  
Attorneys for Plaintiff  
112 Madison Avenue  
New York, New York 10016  
(212) 696-5500  
File Number: Y8236

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X Index No. 13120/07

ABOUBACAR JALLOH,

Plaintiff,  
-against-

THOMAS P. WENDEL,

Defendants.

-----X  
**ATTORNEY'S  
VERIFICATION**

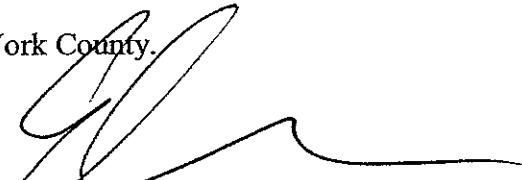
Mark A. Solomon, an attorney duly admitted to practice law before the Courts of New York State, hereby affirms under the penalties of perjury pursuant to CPLR 2106:

I am an associate of the firm of the LAW OFFICES OF PATRICK J. MALONEY, attorneys for defendant, THOMAS P. WENDEL.

I submit the following statement upon information and belief, based upon an inspection of the records maintained by this office, which records I believe to be true.

That I have read the contents of the attached Verified Answer and believe it to be true based on information available or maintained by this firm. I make this verification because this defendant is not located in New York County.

Dated: New York, New York  
May 21, 2007



\_\_\_\_\_  
Mark A. Solomon

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X Index No. 13120/07

ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendants.

-----X

---

**VERIFIED ANSWER**

---

LAW OFFICES OF PATRICK J. MALONEY  
Attorneys for Defendant  
THOMAS P. WENDEL  
90 Broad Street – Suite 2202  
New York, New York 10004  
(646) 428-2650

## EXHIBIT D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
ABOUBACAR JALLOH,

PLAINTIFF,

-against- Case No: 07CIV4091NRB

THOMAS P. WENDEL,

DEFENDANT.

-----x  
112 Madison Avenue  
New York, New York 10016

DATE: February 8th, 2008  
TIME: 1:11 p.m.

EXAMINATION BEFORE TRIAL of the Defendant,  
THOMAS P. WENDEL, taken by the Plaintiff, pursuant  
to a Court Order, held at the above time and  
place, before Linda Orlando, a Registered  
Professional Reporter and Notary Public of the  
State of New York.

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Page 1

1 A P P E A R A N C E S:

2  
3  
4 BUDIN, REISMAN, KUPFERBERG and Bernstein, LLP.,  
Attorneys for the Plaintiff  
5 ABDEUBACAR JALLOH  
6 112 Madison Avenue  
New York, New York 10016  
BY: PETER McCABE, ESQ.  
File #: Y8236

7  
8  
9 LAW OFFICES OF PATRICK J. MALONEY  
Atorneys for the Defendant  
10 THOMAS P. WENDEL  
90 Broad Street  
11 New York, New York 10004  
BY: HENDRICK VANDAMME, ESQ.  
12 File #: 2007-100069

13 \* \* \*

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Page 3

1 F E D E R A L S T I P U L A T I O N S

2  
3 IT IS HEREBY STIPULATED AND AGREED  
4 By and between the counsel for the respective  
5 parties hereto, that the filing, sealing, and  
6 certification of the within deposition shall  
7 be and the same are hereby waived;

8  
9 IT IS FURTHER STIPULATED AND AGREED  
10 That all objections, except as to the form  
11 of the question, shall be reserved to the times  
12 of the trial.

13  
14 IT IS FURTHER STIPULATED AND AGREED  
15 That the within deposition may be signed before  
16 Any Notary Public with the same force and effect  
17 As if signed and sworn to before this court.

18  
19  
20  
21  
22  
23  
24  
25  
\* \* \* \* \*  
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Page 4

1  
2 -----INDEX-----

3  
4 WITNESS EXAMINED BY PAGE  
5 THOMAS P. WENDEL MR. McCABE 5

6  
7 -----EXHIBIT-----  
8  
9  
10 PLAINTIFF'S DESCRIPTION PAGE  
11 EXHIBIT  
12 One Photograph 9

13  
14  
15 INFORMATION AND/OR DOCUMENTATION REQUESTED  
16 INFORMATION AND/OR DOCUMENTATION PAGE  
17 Name of medication 12

18  
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1 Thomas P. Wendel

2 T H O M A S P. W E N D E L, called as a  
3 witness, having been first duly sworn by a Notary  
4 Public of the State of New York, was examined and  
5 testified as follows:

6 EXAMINATION BY MR. McCABE:

7 Q. Please state your name for the  
8 record.

9 A. Thomas P. Wendel.

10 Q. Where do you reside?

11 A. 81 South Lake Shore Drive,  
12 Brookfield, Connecticut, 06804.

13 Q. Good afternoon, sir. My name is  
14 Peter McCabe. I'm an attorney. I represent a  
15 gentleman named Aboubacar Jalloh, who is making a  
16 claim against you for personal injuries as a  
17 result of an automobile accident.

18 A. Yes.

19 Q. I'm going to asking you some  
20 questions about the happening of the accident. My  
21 questions should be short and simple, direct  
22 questions, which you could respond to in the same  
23 manner. But, from time to time you may be  
24 puzzled by a question of mine, and if you are, and  
25 if you have any problem understanding what I'm

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1 Thomas P. Wendel

2 saying, please indicate to that to me and I will  
3 try and explain myself to you.

4 A. Yes.

5 Q. During the course of this examination  
6 I will be asking questions. Your lawyer has  
7 explained to you that the manner in which you're  
8 supposed to answer. But, we have a court  
9 stenographer here or a reporter who records the  
10 questions and answers.

11 You may know what the response is  
12 before I finish. But, wait until you hear my  
13 question and when you answer my question please  
14 respond with whatever response you feel  
15 comfortable with in words of spoken English so the  
16 reporter can record your statements correctly and  
17 succinctly.

18 A. Yes.

19 Q. Sir, on August 7th, the year 2006,  
20 did you have an automobile accident that day?

21 A. Yes, sir.

22 Q. At what time of the day did the  
23 accident happen, approximately?

24 A. I believe it was about one o'clock in  
25 the morning.

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Page 7

1 Thomas P. Wendel

2 Q. Were did the accident happen?

3 A. On Jerome Avenue.

4 Q. At or near an intersecting street?

5 A. I believe it was 182nd Street.

6 Q. At the time of this accident were you  
7 driving a motor vehicle?

8 A. Yes, sir.

9 Q. Was that a 2005 Honda station wagon?

10 A. It's a Honda Element. E-L-E-M-E-N-T.  
11 That's the model.

12 Q. Who was the owner of that vehicle?

13 A. I am.

14 Q. At the time of this incident was  
15 there anyone in the Honda with you?

16 A. No, sir.

17 Q. At the time of this incident did you  
18 have a driver's license?

19 A. Yes, sir.

20 Q. Issued in what state?

21 A. Connecticut.

22 Q. Were there any restrictions or  
23 requirements on that license?

24 A. No, sir.

25 Q. You're wearing glasses at this

Page 8

1 Thomas P. Wendel

2 deposition, correct?

3 A. Yes, sir.

4 Q. What are the glasses designed to  
5 correct?

6 A. They're reading glasses. They're  
7 non-prescription.

8 Q. What part or portion of your vehicle  
9 was involved in this incident?

10 A. The front end.

11 Q. Was there damage to that part of your  
12 vehicle?

13 A. Yes, sir.

14 Q. Was that damage repaired?

15 A. Yes, sir.

16 Q. What was the cost of preparing that  
17 damage, approximately?

18 A. I don't recall. I don't remember.

19 Q. Was it more or less than \$2,500?

20 A. I believe so.

21 Q. All right. Who paid for the repairs?

22 A. Safe Co Insurance.

23 Q. At the time of this accident was your  
24 vehicle in contact with another car or vehicle?

25 A. Yes, sir.

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1 Thomas P. Wendel

2 A. Okay.

3 Q. So, don't agonize.

4 A. Thank you.

5 Q. What type of business or profession  
6 did you have at the time of this event?

7 A. I'm a Police officer.

8 Q. With what agency?

9 A. The Danbury Police Department.

10 Q. What is your title?

11 A. I'm Captain of patrol.

12 Q. Just before this accident happened  
13 were you operating your vehicle on Jerome Avenue?

14 A. Yes, sir.

15 Q. And Jerome Avenue, at or near the  
16 place where this accident happened, is that a  
17 one-way or a two-way street?

18 A. I believe it is a two-way street.

19 Q. In which direction were you  
20 proceeding immediately before the accident  
21 happened?

22 A. Southbound.

23 Q. When last before this accident had  
24 you been in the area where the accident happened?

25 A. I don't know.

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1 Thomas P. Wendel

2 Q. Many years before?

3 A. A long time. Yes, sir.

4 Q. In the direction that you were  
5 proceeding how many lanes were there for moving  
6 traffic?

7 A. I believe there was one.

8 Q. At the place where this accident  
9 happened was the roadway that you were traveling  
10 on wet or dry?

11 A. Dry.

12 Q. Just before this accident happened  
13 the roadway that you were traveling on was it  
14 level or uphill or downhill or something else?

15 A. Level.

16 Q. The contact involving your vehicle  
17 and the Lincoln Town car how would you describe  
18 that, heavy, medium, light, or something else?

19 A. Medium.

20 Q. When the contact occurred was the  
21 Lincoln Town car moving or standing still?

22 A. I believe it was standing still.

23 Q. Just before this contact occurred did  
24 you see the Lincoln Town car?

25 A. I don't remember.

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Page 15

Page 16

1 Thomas P. Wendel

2 Q. As a result of this accident or  
3 incident did you suffer any type of injury  
4 involving your loss of consciousness?

5 A. No.

6 Q. Did you strike your head on something  
7 at the time of your accident?

8 MR. VANDAMME: You have to give a  
9 verbal answer.

10 A. I'm sorry. No, sir.

11 Q. Just before this accident happened  
12 for how many blocks or what distance had you  
13 traveled on Jerome Avenue? Where did you get on  
14 to where the accident happened? What was that  
15 space?

16 A. I was on Fordham Road which  
17 intersects with Jerome Avenue. I'm not sure how  
18 many blocks. I believe it very close. I'm not  
19 sure.

20 Q. What was the closest intersecting  
21 street to the place where this accident happened?

22 A. I don't know. I'm sorry. I believe  
23 it was 182nd Street. I know that now.

24 Q. About how much from the place where  
25 this impact occurred to the intersection of Jerome

1 Thomas P. Wendel

2 Avenue and 182 Street, how much distance separated  
3 those two points?

4 A. I don't remember.

5 Q. Would it be more or less than two car  
6 lengths?

7 A. I don't remember.

8 Q. The intersection of Jerome Avenue and  
9 182nd Street at the time of this accident was it  
10 controlled by a traffic light?

11 A. I don't remember.

12 Q. When this contact occurred did the  
13 vehicle, the Lincoln Town car, did it move?

14 A. I don't know.

15 Q. An instant before there was an impact  
16 was the Lincoln Town car moving or standing still?

17 A. I don't know. I don't remember. I  
18 believe it was stopped.

19 Q. How long was it stopped before the  
20 accident happened?

21 A. I don't know.

22 Q. At the time of this accident did you  
23 have a cellphone with you?

24 A. Yes.

25 Q. Were you talking on the cellphone at

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Thomas P. Wendel

time of the accident?

A. No, sir.

Q. Were you eating or drinking anything at the time of the accident?

A. No, sir.

Q. I know you said you were alone?

A. Yes.

Q. Were you eating or drinking?

A. No.

Q. Following this accident did the Police come to the scene?

A. Yes, sir.

Q. Did you contact the Police?

A. No, sir.

Q. How soon after the accident did the Police appear, approximately?

A. Very quickly.

Q. Did they arrive on foot or by vehicle?

A. I believe they were on foot.

Q. When the Police arrived where was your car?

A. Right where the accident occurred.

Q. What about the Lincoln Town car?

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File 06/05/2008

Thomas P. Wendel

A. I believe it was right where the accident occurred.

Q. When the Police arrived were you in your car or out of your car?

A. I was in my car.

Q. Did you get out when the Police got there?

A. Yes.

Q. When you got out were both vehicles in the same position where they had stopped immediately after the impact?

A. I know my car was.

Q. What about the other car?

A. I believe it was. But, I can't be sure.

Q. About how much space separated the two cars, your car and the Lincoln Town car?

A. No, I don't know.

Q. Did you speak to the Police?

A. Yes.

Q. Did they take your license and registration information?

A. Yes, sir.

Q. Did you identify yourself to the  
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Page 19

Page 20

Thomas P. Wendel

Police as a Police officer?

A. Yes, I did.

Q. Did they ask you what happened?

A. Yes, they did.

Q. Did you tell them?

A. Yes, I did.

Q. What did you tell them?

A. I told them I rear ended the other car.

Q. Other than, "I rear ended the other car," did you give them any other explanation as to that event?

A. I told them I took my eyes off the road and I didn't see the car.

Q. Did you speak to the driver of the Lincoln Town car?

A. Yes, I do.

Q. What did you say to him?

A. I told them to go back to his car.

To calm down.

Q. And did he respond to you?

A. I couldn't understand him, sir.

Q. When the Police arrived was the driver of the Lincoln Town car still present?

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Thomas P. Wendel

A. Yes.

Q. Within your hearing did the driver of the Lincoln Town car have a conversation with the Police?

A. Within my hearing, no.

Q. Was your vehicle towed from the scene?

A. Yes, it was.

Q. When you left the scene was the Lincoln Town car still at the scene of the accident?

A. I don't remember.

Q. Did you observe was the Lincoln Town car also towed from the scene?

A. No, sir.

Q. How do you know that?

A. Well, while I was there, it was not towed.

Q. When you left the scene of the accident it was still present?

A. I'm not sure. I don't believe so, but.

Q. Was your vehicle equipped with air bags?

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Thomas P. Wendel

A. Yes.

Q. Did the air bags deploy?

A. No.

Q. What was the event or thing that distracted you as you've indicated before?

A. I was just looking around. The change in the scenery since the last time I had been there.

MR. McCABE: Thank you, sir.

THE WITNESS: Thank you.

(whereupon, at 1:31 p.m. the

Examination of this Witness was concluded.)

THOMAS P. WENDEL

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

NOTARY PUBLIC

JAY DEITZ AND ASSOCIATES LTD.  
516-678-0700 212-374-7700 718-527-7700 FAX# 516-678-4488

Thomas P. Wendel

## CERTIFICATE

I, LINDA ORLANDO, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of February, 2008.

*Linda Orlando*

LINDA ORLANDO, RPR

JAY DEITZ AND ASSOCIATES LTD.  
516-678-0700 212-374-7700 718-527-7700 FAX# 516-678-4488

Page 24

Page 23

A	7:3 11:6,20 13:13 13:15 15:13,17 16:2,8	closest 15:20 come 17:12 comfortable 6:15 coming 10:14,15 concert 10:24 11:2 concluded 21:13 Connecticut 5:12 7:21 consciousness 15:4 contact 8:24 9:24 10:4 14:6,20,23 16:12 17:14 driver's 7:18 controlled 16:10 conversation 20:4 correct 8:2,5 correctly 6:16 cost 8:16 counsel 13:5 course 6:5 court 1:2,18 3:18 6:8	distance 15:12 16:2 distracted 21:6 <b>DISTRICT</b> 1:2,2 <b>DOCUMENTAT...</b> 4:15,16 downhill 14:14 drink 11:25 drinking 17:4,9 Drive 5:11 follows 5:5 foot 17:19,21 force 3:17 Fordham 10:15 15:16 forget 12:9 drugs 12:4 dry 14:10,11 duly 5:3 22:7	February 1:13 22:15 feel 6:14 File 2:7,12 filing 3:6 finish 6:12 first 5:3 following 9:9 17:11 forwards 5:5 foot 17:19,21 force 3:17 Fordham 10:15 15:16 forget 12:9 drugs 12:4 dry 14:10,11 duly 5:3 22:7	HENDRICK 2:11 hereinbefore 22:7 acerto 3:6 hereunto 22:14 Honda 7:9,10,15 hours 11:23 12:7	15:25 16:8 mark 9:13 operating 9:3 Order 1:18 Orlando 1:19 22:4 22:18 McCABE 2:6 4:5 5:6,14 9:13 12:15 21:10 medication 4:17 9:18,21 identify 18:25 immediately 9:25 10:17 13:20 18:12 impact 15:25 16:15 18:12 incident 7:14,17 8:9 9:6 15:3 INDEX 4:3 indicate 6:2 indicated 21:6 level 14:14,15 information 4:15 4:16 18:23 injuries 5:16 injury 15:3 insert 12:24 instant 16:15 Insurance 8:22 interested 22:12 intersecting 7:4 15:20 intersection 15:25 16:8 intersects 15:17 involved 8:9 9:5 involving 14:16 15:4 Island 10:18 Issued 7:20	K	P 1:7,17 2:2,2,10 3:2 4:5 5:1,2,9 6:1 7:1 8:1 9:1 10:1 11:1 12:3 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1,15 22:1 PAGE 4:4,10,16 paid 8:21 part 8:8,11 9:5 parties 3:6 22:11 PATRICK 2:9 patrol 13:11 period 11:23 New 1:2,11,11,21 2:6,6,11,11 5:4 22:5 non-prescription 8:7 12:4 place 1:19 10:16,16 13:16 14:8 15:21 15:24 Plaintiff 1:4,17 2:4 Plaintiff's 4:10 9:14,17,21 please 5:7 6:2,13 9:15 point 12:16,22,24 points 16:3 Police 13:7,9 17:12 14:20,23 15:25 16:12 17:24 18:3 officer 13:7 19:2 20:5 OFFICES 2:9 Okay 13:2 portion 8:8 position 18:11 preceding 11:18	P	P 1:7,17 2:2,2,10 3:2 4:5 5:1,2,9 6:1 7:1 8:1 9:1 10:1 11:1 12:3 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1,15 22:1 PAGE 4:4,10,16 paid 8:21 part 8:8,11 9:5 parties 3:6 22:11 PATRICK 2:9 patrol 13:11 period 11:23 New 1:2,11,11,21 2:6,6,11,11 5:4 22:5 non-prescription 8:7 12:4 place 1:19 10:16,16 13:16 14:8 15:21 15:24 Plaintiff 1:4,17 2:4 Plaintiff's 4:10 9:14,17,21 please 5:7 6:2,13 9:15 point 12:16,22,24 points 16:3 Police 13:7,9 17:12 14:20,23 15:25 16:12 17:24 18:3 officer 13:7 19:2 20:5 OFFICES 2:9 Okay 13:2 portion 8:8 position 18:11 preceding 11:18	Q	question 3:12 5:24 6:13,13 questions 5:20,21 5:22 6:6,10 quickly 17:18	R	R 2:2 3:2 22:2 rainning 10:12 reading 8:6 read 9:7,8 19:9,11 recall 8:18 receive 12:22 records 5:6 16:22 22:8 records 6:9 reduced 12:21 Registered 1:19 registration 18:23 REISMAN 2:4 related 22:10 remember 8:18 14:25 16:4,7,11 16:17 20:13 repairs 8:14 repairs 8:21 reporter 12:20 6:9 6:16 9:19	S	JAY DEITZ AND ASSOCIATES LTD. 516-678-0700 212-374-7700 718-527-7700 FAX# 516-678-4488
B		E	G	H	I	J	K	L	M	N	O					
C	14:2 22:2 called 5:2 calm 19:21 Captain 13:11 car 8:24 9:3,9 10:5 14:17,21,24 16:5 16:13,16 17:23,25 18:5,5,6,13,14,18 18:18 19:10,12,15 19:17,20,25 20:4 20:11 cars 18:18 Case 1:6 Catholic 11:21 cellphone 16:23,25 certification 3:7 certify 22:5,10 August 6:19 automobile 5:17 6:20 Avenue 1:10 2:5 close 15:18	damage 8:11,14,17 9:11 Danbury 13:9 dark 10:10 date 1:13 9:19 day 6:20,22 12:8 21:18 22:15 Deegan 11:8 Defendant 1:8,16 2:9 Department 13:9 deploy 21:3 deposition 3:7,16 8:2 depression 12:5 describe 14:17 DESCRIPTION 4:10 designed 8:4 direct 5:21 direction 13:19 14:4	gentleman 5:15 Element 7:10 ended 19:9,11 English 6:15 entertainment 10:21,23 equipped 20:24 ESQ 2:6,11 event 12:7 13:6 19:13 21:5 examination 1:16 5:6 6:5 21:13 22:6,8 examined 4:4 5:4 Exhibit 4:9,11 9:14 13:21,24 14:9,12 15:11,14,21 16:20 19:4 examination 1:16 head 15:6 hear 6:12 heavy 14:18 held 1:18	February 1:13 22:15 feel 6:14 File 2:7,12 filing 3:6 finish 6:12 first 5:3 following 9:9 17:11 forwards 5:5 foot 17:19,21 force 3:17 Fordham 10:15 15:16 forget 12:9 drugs 12:4 dry 14:10,11 duly 5:3 22:7	HENDRICK 2:11 hereinbefore 22:7 acerto 3:6 hereunto 22:14 Honda 7:9,10,15 hours 11:23 12:7	15:25 16:8 mark 9:13 operating 9:3 Order 1:18 Orlando 1:19 22:4 22:18 McCABE 2:6 4:5 5:6,14 9:13 12:15 21:10 medication 4:17 9:18,21 identify 18:25 immediately 9:25 10:17 13:20 18:12 impact 15:25 16:15 18:12 incident 7:14,17 8:9 9:6 15:3 INDEX 4:3 indicate 6:2 indicated 21:6 level 14:14,15 information 4:15 4:16 18:23 injuries 5:16 injury 15:3 insert 12:24 instant 16:15 Insurance 8:22 interested 22:12 intersecting 7:4 15:20 intersection 15:25 16:8 intersects 15:17 involved 8:9 9:5 involving 14:16 15:4 Island 10:18 Issued 7:20	K	P 1:7,17 2:2,2,10 3:2 4:5 5:1,2,9 6:1 7:1 8:1 9:1 10:1 11:1 12:3 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1,15 22:1 PAGE 4:4,10,16 paid 8:21 part 8:8,11 9:5 parties 3:6 22:11 PATRICK 2:9 patrol 13:11 period 11:23 New 1:2,11,11,21 2:6,6,11,11 5:4 22:5 non-prescription 8:7 12:4 place 1:19 10:16,16 13:16 14:8 15:21 15:24 Plaintiff 1:4,17 2:4 Plaintiff's 4:10 9:14,17,21 please 5:7 6:2,13 9:15 point 12:16,22,24 points 16:3 Police 13:7,9 17:12 14:20,23 15:25 16:12 17:24 18:3 officer 13:7 19:2 20:5 OFFICES 2:9 Okay 13:2 portion 8:8 position 18:11 preceding 11:18	P	P 1:7,17 2:2,2,10 3:2 4:5 5:1,2,9 6:1 7:1 8:1 9:1 10:1 11:1 12:3 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1,15 22:1 PAGE 4:4,10,16 paid 8:21 part 8:8,11 9:5 parties 3:6 22:11 PATRICK 2:9 patrol 13:11 period 11:23 New 1:2,11,11,21 2:6,6,11,11 5:4 22:5 non-prescription 8:7 12:4 place 1:19 10:16,16 13:16 14:8 15:21 15:24 Plaintiff 1:4,17 2:4 Plaintiff's 4:10 9:14,17,21 please 5:7 6:2,13 9:15 point 12:16,22,24 points 16:3 Police 13:7,9 17:12 14:20,23 15:25 16:12 17:24 18:3 officer 13:7 19:2 20:5 OFFICES 2:9 Okay 13:2 portion 8:8 position 18:11 preceding 11:18	Q	question 3:12 5:24 6:13,13 questions 5:20,21 5:22 6:6,10 quickly 17:18	R	R 2:2 3:2 22:2 rainning 10:12 reading 8:6 read 9:7,8 19:9,11 recall 8:18 receive 12:22 records 5:6 16:22 22:8 records 6:9 reduced 12:21 Registered 1:19 registration 18:23 REISMAN 2:4 related 22:10 remember 8:18 14:25 16:4,7,11 16:17 20:13 repairs 8:14 repairs 8:21 reporter 12:20 6:9 6:16 9:19	S	JAY DEITZ AND ASSOCIATES LTD. 516-678-0700 212-374-7700 718-527-7700 FAX# 516-678-4488

represent 5:14	15:10 17:3,6,13	tell 9:23 19:6,8	understand 19:23	Y
REQUESTED 4:15	17:15 18:24 19:23	testified 5:5	understanding 5:25	year 6:19
requirements 7:23	20:16 21:10	testimony 22:8	UNITED 1:2	years 14:2
reserved 3:12	soon 17:16	Thank 13:4 21:10	University 11:6	York 1:2,11,11,21
reside 5:10	sorry 12:17 15:10	21:11	uphill 14:14	2:2,6,11,11 5:4
respective 3:5	15:22	thing 21:5	V	22:5
respond 5:22 6:14 19:22	South 5:11	think 12:18	VANDAMME 2:11	Y8236 2:7
response 6:11,14	Southbound 13:22	Thomas 1:7,17	12:14 15:8	\$
restrictions 7:22	SOUTHERN 1:2	2:10 4:5 5:1,9 6:1	vehicle 7:7,12 8:8	\$2,500 8:19
result 5:17 15:2	space 12:19,23	7:1 8:1 9:1 10:1	8:12,24 24:9 5:23	0
right 8:21 11:7,10 17:24 18:2	15:5 18:17	11:1 12:1 13:1	11:14 13:13 14:16	068045 5:12
road 10:5 15:16 19:15	speak 18:20 19:16	14:1 15:1 16:1	16:13 17:20 20:7	07CIV4091NRB
roadway 14:9,13	spoken 6:15	17:1 18:1 19:1	20:24	1:6
Roosevelt 10:18	spot 12:12	20:1 21:1,15 22:1	vehicles 10:4 18:10	1
RPR 22:18	standing 14:21,22	time 1:14,18 5:23	verbal 15:9	1:11 1:14
S	16:16	5:23 6:22 7:6,14	visit 11:8	1:31 21:12
S 2:2 3:2,2 5:2	state 1:21 5:4,7	7:17 8:23 9:24	W	10:6 22:15
Safe 8:22	7:20 22:5	10:3,7 11:3 12:14	W 5:2	10004 2:11
saying 6:2 12:20	statements 6:16	13:6 14:3 15:7	wagon 7:9	10016 1:11 2:6
scene 17:12 20:8,10 20:11,15,20	STATES 1:2	16:9,22 17:2,5	wait 6:12	11:2 1:10 2:5
scenery 21:8	station 7:9	21:8	waved 3:8	12:4 17
school 11:21	steno-grapher 6:9	times 3:12	wanted 11:8,21	1263 11:6
sealing 3:6	STIPULATED 3:4	title 13:10	way 22:12	182 16:2
second 12:13	3:10,15	told 19:9,14,20	wearing 7:25	182nd 7:5 15:23
see 9:11 10:4 11:21 14:24 19:15	stopped 11:16	towed 20:7,15,19	Wendel 1:7,17 2:10	16:9
sent 12:22	16:18,19 18:11	Town 9:3 10:5	4:5 5:1 9:6 1:7	2
separated 16:2 18:17	street 2:10 7:4,5	14:17,21,24 16:13	8:1 9:1 10:1 11:1	2005 7:9
set 22:7,14	13:17,18 15:21,23	16:16 17:25 18:18	12:1 13:1 14:1	2006 6:19
Shore 5:11	16:2,9	19:17,25 20:4,11	15:1 16:1 17:1	2007-100069 2:12
short 5:21	strike 15:6	20:14	18:1 19:1 20:1	2008 1:13 21:18
show 9:20,23 10:21	Subscribed 21:17	traffic 14:6 16:10	21:1,15 22:1	22:15
signed 3:16,18	succinctly 6:17	transcript 12:23	went 10:21	
simple 5:21	suffer 15:3	traveled 15:13	wet 14:10	5
sir 5:13 6:19 21:7 8:8	supposed 6:8	traveling 14:9,13	We'll 12:15	5:4,5
7:16,19,24 8:3,13 8:15,25 9:4,12,20	sure 15:17,19 18:16	trial 1:16 3:13	WHEREOF 22:14	7
10:23,25 11:12	20:22	true 22:8	witness 4:4 5:3	7th 6:19
12:9 13:14 14:3	sworn 3:18 5:3	try 6:3	12:17 21:11,13	8
	21:17 22:7	twelve 11:23 12:7	22:6,9,14	8th 1:13
	T	two 10:4 16:3,5	words 6:15	81:5,11
	T 3:2,2 5:2 22:2,2	18:18	written 12:21	9
	take 9:22 11:20	two-way 13:17,18	X	
	12:5,8,10,14	type 12:21 13:5	X 1:3,9	
	18:22	15:3		
	taken 1:17 12:3,6	U		
	talking 16:25	U 3:2		

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## EXHIBIT E

**Mark S. McMahon, M.D.**

*876 Park Avenue  
New York, New York 10021  
Phone: (212) 717-1405  
Fax: (212) 396-3277*

May 14 , 2008

Budin, Reisman, Kupferberg and Bernstein  
112 Madison Avenue  
New York, New York 10016

**RE: Aboubacar Jalloh**

Att: Mable Garcia

On August 6, 2006 the patient was in a motor vehicle accident in which his car was stationary at a red light and he was rear-ended. His head, neck and back were injured. On August 10, 2006 he saw Dr. Nelson, who started him on physical therapy. He saw Dr. Nelson in follow-up on September 21, 2006 and November 2, 2006. Dr. Nelson performed an EMG of his lower extremities which was negative on October 4, 2006. The patient went to physical therapy from August 15, 2006 until November 8, 2006. On September 5, 2006 the patient was seen by a psychologist, Dr. Kogan. He was seen in follow-up on September 6, 2006, September 19, 2006, September 20, 2006, September 26, 2006, October 3, 2006, October 24, 2006, November 7, 2006, and November 15, 2006. He was out of work as a taxi driver for 3 months after the accident.

On August 9, 2006 he had an x-ray of his cervical spine which showed muscular spasm. On August 9, 2006 he had an x-ray of his lumbar spine which showed mild degenerative changes. On August 16, 2006 he had an MRI of his cervical spine which showed disc herniations at C3-4 and C5-6 deforming the dural sac. In addition, it showed a bulging disc at C4-5 with flattening of the dural sac. On August 21, 2006 the patient had an x-ray of his thoracic spine which showed mild dextro-scoliosis. On September 6, 2006 the patient had an MRI of his lumbar spine which showed a bulging disc at L4-5 with flattening of the dural sac and bilateral foraminal encroachment. It also showed an L5-S1 disc bulge with flattening of the epidural fat.

Currently, the patient is unable to work due to his neck and back problems. He has pain radiating down both legs. His legs feel weak. His neck and back are worse with

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May 14, 2008

**RE: Aboubacar Jalloh**

bending and lifting. He wakes up at night with pain in his neck and back. Weather changes make his condition worse. He has worsening pain with prolonged sitting, standing, and walking.

**PAST MEDICAL HISTORY:**

Negative.

**MEDICATIONS:**

Tylenol.

**PHYSICAL EXAMINATION:**

On physical examination of the cervical spine: he can flex to 2 degrees with pain (nl 60). He can extend to 0 degrees with pain (nl 50). He can bend to the left and right 0 degrees with pain (nl 40). Sensation is intact in his upper extremities. He is tender to palpation in the paracervical musculature.

On physical examination of his lumbar spine: he can flex to 2 degrees with pain (nl 90). He can extend to 0 degree with pain (nl 30). He can bend to the right 0 degrees with pain (nl 20). He can bend to the left 0 degrees with pain (nl 20). He has decreased sensation to light touch in his left lower extremity. His EHL strength is 3+/5 bilaterally. He has a positive straight leg raising sign bilaterally.

**DIAGNOSIS:**

1. Cervical disc herniations at C3-4 and C5-6 deforming the dural sac. Bulging disc at C4-5 with flattening of the dural sac.
2. Lumbar spine bulging disc at L4-5 with flattening of the dural sac with bilateral foraminal encroachment. L5-S1 bulging disc with flattening of the epidural fat.

***Mark S. McMahon, M.D.***

*876 Park Avenue  
New York, New York 10021  
Phone: (212) 717-1405  
Fax: (212) 396-3277*

May 14 , 2008

**RE: Aboubacar Jalloh**

**CAUSATION:**

The above diagnoses occurred as a result of the accident of August 6, 2006.

**PROGNOSIS:**

The patient's prognosis is poor. His condition is permanent. He is now 1 ¾ years from the time of the accident. His condition interferes with his quality of life and his activities of daily living. He is unable to work as a taxi driver because of his injuries. The patient requires a multilevel cervical discectomy and fusion using instrumentation and bone graft. In addition, he requires an L4-S1 decompression and fusion using instrumentation and bone graft.

I, the undersigned, am a physician authorized by law to practice medicine in the State of New York, and I am not a party to this proceeding. I have reviewed the medical records pertaining to this patient and have provided a report that summarizes my evaluation. The statements in the report are true and accurate under penalty of perjury.

*Mark S. McMahon, M.D.*

Mark S. McMahon, M.D.

## EXHIBIT F

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

ABOUBACAR JALLOH,

**AFFIDAVIT**

Plaintiff,

Index No.: 07 Civ. 4091(NRB)

-against-

THOMAS P. WENDEL,

Defendant.

-----X

STATE OF NEW YORK      )  
                              )ss:  
COUNTY OF BRONX      )

I, ABOUBACAR JALLOH, being duly sworn deposes and says:

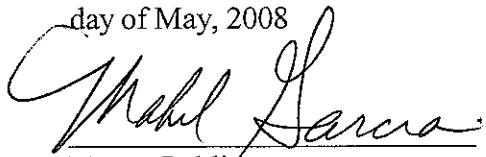
1. That I presently reside at 108 East Clark Place, Bronx, New York, 10452.
2. On or about August 6, 2006, at 182nd Street and Jerome Avenue, County of Bronx, I was the seatbelted driver of a motor vehicle. I was stopped at a red traffic light when suddenly and without warning, my vehicle was struck from the rear by the vehicle driven by defendant. It was a very heavy impact.
3. After the accident, the police came to the scene. I did not get out of my car at any time. I was not aware of the severity of my injuries, and I just wanted to go home and lie down, so I told the police officers that I was not ready to leave in an ambulance. Instead, I called my friend, who came to the scene and took me to my home.
4. While on the way home, I felt pain in my neck and lower back. I also had a very bad headache. The pain in my back went all the way down into my legs. I laid down as soon as I got home and went to see a doctor the next morning because I was in very much pain. I was given pain medicine, and electrical stimulation and hot packs were placed on my neck and lower back.
5. I started, at the recommendation of my doctor, a four-month course of physical therapy, which I attended three times per week. The doctor gave me massages, hot and cold packs, did MRIs and did electrical stimulation, all to my neck and lower back.
6. I stopped going to physical therapy, because after going there three times per week for four months, my pain did not go away. I feel it was not helping me completely to get better.
7. I have to rub Ben-Gay on my neck and lower back every night before bed, or else I wake up with very bad neck and lower back pain and stiffness.

8. Prior to the accident, I was working as a taxi driver. I try to go back to work when I feel better, but I can not work because of my severe neck and back pain and neck stiffness. It is still very painful for me to turn my head or sit for too long. I have not returned to work on a regular basis. I have worked only maybe two months total since the accident. I want to go back to work when I feel better.
9. It is very painful for me to get on my knees and pray, which I do five times per day, every day of the week. Prayer is the most important thing in my life, and it is very difficult for me to concentrate because of the pain I am in while I do it. I can not walk for a very long time, and I have to walk much slower than I did before the accident because of my lower back pain.

ABOUBACAR JALLOH

ABOUBACAR JALLOH

Sworn to before me this 28<sup>th</sup>  
day of May, 2008



Notary Public

MABEL C. GARCIA  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK  
NO. 1-3097  
COMMISSION EXPIRES MARCH 1, 2009

## EXHIBIT G

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ABOUBACAR JALLOH,  
Plaintiff,  
vs. No. 07 Civ 4091 (NRB)  
THOMAS P. WENDEL,  
Defendant.

**COPY**

DEPOSITION OF ABOUBACAR JALLOH  
New York, New York  
Friday, February 8th, 2008

Reported by:  
Jeremy Frank, MPM  
JOB NO. 672356a

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1-800-944-9454

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Page 3

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A P P E A R A N C E S:

BUDIN, REISMAN, KUPFERBERG & BERNSTEIN,  
LLP  
Attorneys for Plaintiff  
112 Madison Avenue  
New York, NY 10016  
BY: PETER McCABE, ESQ., of counsel

LAW OFFICES OF PATRICK J. MALONEY  
Attorneys for Defendant  
90 Broad Street, Suite 2202  
New York, NY 10004  
BY: HENDRICK VANDAMME, ESQ.

ALSO PRESENT:  
MAMADOU DOUMBOUYA, interpreter

Page 4

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IT IS HEREBY STIPULATED AND AGREED,  
by and between counsel for the respective  
parties hereto, that the filing, sealing and  
certification of the within deposition shall  
be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED  
that all objections, except as to the form  
of the question, shall be reserved to the  
time of the trial;

IT IS FURTHER STIPULATED AND AGREED  
that the within deposition may be signed  
before any Notary Public with the same force  
and effect as if signed and sworn to before  
the Court.

Esquire Deposition Services  
1-800-944-9454

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1-800-944-9454

6 A B C O U B A C A R J A L L O H, called as a  
7 witness, having been duly sworn by a Notary  
8 Public, was examined and testified through the  
9 interpreter as follows:

10 EXAMINATION BY

11 MR. VANDAMME:

12 Q. Good morning, Mr. Jalloh.  
13 My name is Hendrick Vandamme and  
14 I'm an attorney with Patrick Maloney's office.  
15 Today I'll be asking you a series of questions  
16 pertaining to an accident that allegedly  
17 occurred on August 7th, 2006.

18 A. Okay.

19 Q. Before we start, I want to give  
20 you some ground rules for this deposition. As  
21 you know, the court reporter is taking down  
22 everything that you say, so its important that  
23 you answer with words rather than with a nod  
24 or a shake of the head.

25 Do you understand?

**Esquire Deposition Services**  
**1-800-944-9454**

8      2      Show

10 Q. Mr. Jalloh, do you understand that  
11 you are under oath today?

12 A. Yes, I understand.

13 Q. Okay.  
14 If you don't understand any of my  
15 questions, please make sure that you tell me  
16 and I'll rephrase it or I'll ask it again.

13 All rights reserved

18 Q. If you need to take a break at any  
19 time during this deposition, please let me  
20 know and I'll accommodate your request.

31 Okay

22 Q. Are you prepared to answer my  
23 questions today?

24 A. Yes.

25 Q. Yes.

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Page 1

Jalloh

Please state your name for the record.

A. Aboubacar Jalloh.

Q. Your last name is Mr. Jalloh, correct, your first name is Aboubacar?

A. Yes.

Q. Okay.

What's your current address?

A. 108 East Clark Place in The Bronx.

Q. How long have you lived at this place?

A. Since 2000 I'm in that address.

Q. Are you renting or do you own that place?

A. I'm renting.

Q. Is there anyone else who lives in this place, in this address with you?

A. I live there with other people.

Q. Who are those people, how many people live there?

A. Two people.

Q. Who are those people?

A. M-o-u-h-a-m-a-d-o-u S-o-w,  
Mouhamadou Sow, M-a-m-a-d-o-u A-l-i-m-o-u

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1 Jalloh

2 A. June 5th, '63.

3 Q. Are you a United States citizen?

4 MR. McCABE: Note my objection.

5 He may answer the question.

6 A. No.

7 Q. What's your current immigration  
8 status?

9 MR. McCABE: Objection.

10 You may answer the question.

11 A. I don't have a status.

12 Q. When did you come to The United  
13 States?

14 A. Its been a while now.

15 Q. Is it more than 10 years ago?

16 A. Its not more than that but its  
17 close to that now.18 Q. How did you come to The United  
19 States?

20 A. I came here by a visa.

21 Q. When you entered the United  
22 States, what type of visa did you have when  
23 you entered the country?

24 A. Visa like merchant, like merchant.

25 Q. Okay.

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1 Jalloh

2 What was the name of the visa, was  
3 it a B1, B2, was it an E visa, what type of  
4 visa was it?

5 A. If I'm not mistaken, its a B2.

6 Q. As I understand, B2 is not a  
7 merchant's visa, correct?8 MR. McCABE: Is that a question or  
9 a statement? Note my objection to the  
10 form.

11 He may answer the question.

12 Q. Is B2 visa a visitor's visa?

13 A. That I don't know.

14 Q. Okay.

15 You stated that you came on a  
16 merchant visa. What type of business were you  
17 involved in when you came to The United  
18 States?

19 A. It was to buy merchandises.

20 Q. What type of merchandises?

21 A. Like a T-shirt.

22 Q. Did you have your own business  
23 back in Guinea before you entered the United  
24 States?

25 A. Yes.

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Page 11

1 Jalloh

2 Q. What was the name of that  
3 business?

4 A. It was selling.

5 Q. I understand, but what was the  
6 nature of your business, were you a sole  
7 proprietor, did you have a corporation, what  
8 type of business was it?

9 A. I was working for myself.

10 Q. Okay.

11 Now you stated that you came here  
12 approximately not more than 10 years ago.  
13 When you entered the United States, what was  
14 your first address?15 A. The first place I stayed here was  
16 Davidson Avenue.

17 Q. Where is Davidson Avenue?

18 A. Bronx.

19 Q. Mr. Jalloh, what's the highest  
20 level of education that you received in  
21 Guinea?22 A. Just like eight years of  
23 education.24 Q. Did you receive any higher  
25 education in the United States?Esquire Deposition Services  
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Page 12

1 Jalloh

2 A. I didn't go to school like to  
3 official school or something like that, but I  
4 was learning the language more.

5 Q. Okay.

6 Have you ever been known by any  
7 other name than Aboubacar Jalloh?

8 A. No.

9 Q. Did you have any nicknames?

10 A. Nickname?

11 Q. Nickname.

12 A. No.

13 Q. Okay.

14 What's your current profession,  
15 what's your current --16 MR. McCABE: What do you do for a  
17 living?

18 Q. What do you do for a living?

19 A. Presently I don't work often, just  
20 rarely because I'm not in good health right  
21 now.22 Q. When you say rarely, how often do  
23 you work?24 MR. McCABE: In the period of time  
25 of the last six weeks?Esquire Deposition Services  
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1 Jalloh

2 MR. VANDAMME: Let's say in the  
 3 last six months.

4 MR. McCABE: Six months, okay.

5 A. In a period of six months I had  
 6 maybe two months of work.

7 Q. What type of work did you do in  
 8 those last six months?

9 A. Driving taxi.

10 Q. Do you work for a particular  
 11 company or do you own your cab?

12 A. Presently I don't have a car, my  
 13 friends are the ones who give me their cars to  
 14 drive.

15 Q. What are the names of your friends  
 16 that give you the cars?

17 A. Alpha Bah, but also he's not here  
 18 right now, he returned; he's the one who used  
 19 to give me his car.

20 Q. Okay.

21 Is there one more person or is he  
 22 the only one?

23 A. Right now, nobody else.

24 Q. What type of car did he use to  
 25 give you?

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1 Jalloh

2 A. Lincoln.

3 Q. Do you know the car registration  
 4 number of this car?

5 A. No, I don't recall that.

6 Q. Now Mr. Jalloh, do you hold a  
 7 driver's license?

8 A. Yes.

9 Q. Is it a New York driver's license?

10 A. Yes.

11 Q. When did you obtain this New York  
 12 driver's license?

13 A. Its been a long time.

14 Q. Do you know when the license was  
 15 issued?

16 A. The last time it was issued?

17 Q. No, when the license was issued  
 18 for the first time.

19 A. That I forgot.

20 Q. How did you obtain your driver's  
 21 license?

22 MR. McCABE: I'm going to object.

23 What does that have to --

24 MR. VANDAMME: What does it have to  
 25 do with it, I don't know if he has a

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Page 15

1 Jalloh

2 license. He's here illegally, I'm trying  
 3 to establish if he has a driver's  
 4 license. He doesn't know when the  
 5 license was issued, counsel. I'm asking  
 6 a very simple question when was the  
 7 license issued. If I have a license, I  
 8 know when my license was issued.

9 MR. McCABE: No, no, you're not the  
 10 witness.

11 MR. VANDAMME: I understand.

12 MR. McCABE: Counsel, you're  
 13 working on a different level than this  
 14 gentleman, you're an attorney and there  
 15 is a difference.

16 MR. VANDAMME: I understand.

17 So --

18 MR. McCABE: You can ask him  
 19 approximately when, maybe he understands  
 20 the question as you want a specific date,  
 21 month and year, things like that.

22 MR. VANDAMME: It doesn't have to  
 23 be specific, I can ask him approximately.

24 MR. McCABE: Ask approximately.

25 MR. VANDAMME: I understand.

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Page 16

1 Jalloh

2 MR. McCABE: When did you first get  
 3 a driver's license approximately, if he  
 4 knows. Can you ask it that way  
 5 approximately, about when?

6 THE WITNESS: Since I got my first  
 7 license?

8 MR. McCABE: Yes.

9 Nothing is simple.

10 A. I forgot. I don't recall, I  
 11 forgot.

12 Q. Okay.

13 Did you take any test to obtain  
 14 your license?

15 A. Yes, I did.

16 Q. When you took this test, where did  
 17 you take this test?

18 A. In Brooklyn.

19 Q. In what language was the test  
 20 conducted?

21 A. English.

22 Q. Do you speak English?

23 A. Yes, I speak a little bit.

24 Q. Okay.

25 Let's talk about the accident, the

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Page 27

Jalloh

1 A. Like eight hours.

2 Q. Now when you mentioned that you  
3 were standing at the intersection and the  
4 light was red, at some point did you feel an  
5 impact?

6 A. Yes.

7 Q. At the time of the impact where  
8 were you looking?

9 A. When he hit me, I didn't see  
10 anything at that time, my mind was completely  
11 messed up.

12 Q. Do you remember immediately  
13 preceding the accident what were you doing?

14 A. I was stopping for the light to  
15 turn green.

16 Q. Okay.

17 Where were your hands?

18 A. On the wheel.

19 Q. Were you listening to the radio?

20 A. No.

21 Q. Were you talking on a cell phone?

22 A. No.

23 Q. Do you own a cell phone?

24 A. Yes.

Page 28

Jalloh

Q. How about your brakes, when was the last time you had your brakes serviced prior to the time of this incident?

A. When this driver hit me, at that time my foot was on the brake.

Q. Was it your left foot or your right foot?

A. Right foot.

Q. Were you wearing a seat belt?

A. Yes.

Q. What type of seat belt were you wearing, a shoulder to lap or lap to lap; what type of seat belt was it?

MR. VANDAMME: Let the record reflect that the witness is indicating that he was wearing a shoulder to lap seat belt.

A. The seat belt was like a, you take it from here and you pass it through your, like through your stomach and you buckle it down here (indicating).

Q. Okay.

Were there any passengers in your car at the time of this incident?

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Page 29

Page 30

Jalloh

1 A. No.

2 Q. Did your car have an air bag?

3 A. Yes, it has it.

4 Q. Did your air bag deploy at the

5 time of the incident?

6 A. No, I didn't see it, at that time

7 I didn't see it.

8 Q. Okay, let me ask you this.

9 At the time of the impact, did any

10 portion of your body hit any portion of the

11 car, and if so, which one?

12 A. What happened when the driver hit

13 me, I had the belt on, but what happened my

14 head went toward the wheel (indicating).

15 Q. The steering wheel?

16 A. The steering wheel, and I came

17 back also to my seat, that's what happened

18 (indicating).

19 Q. Did your head at any point hit the

20 steering wheel?

21 A. At that time I don't know what

22 happened to me because right there I lost my

23 mind.

24 Q. Did you lose your consciousness as

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Jalloh

1            a result of the impact?

2            A.       I lost my consciousness.

3            Q.       Mr. Jalloh, do you remember when

4            you again gained consciousness following the

5            impact?

6            A.       After a while.

7            Q.       Can you tell me approximately

8            when, if you know?

9            A.       After like one hour.

10          Q.       Were you still in the car when you

11          gained consciousness?

12          A.       Yes.

13          Q.       Once you gained consciousness,

14          what do you remember, what do you recall

15          seeing?

16          A.       I see people were there

17          surrounding the cars all over.

18          Q.       How many people did you see

19          approximately?

20          A.       That I cannot count.

21          Q.       Did you see any ambulance?

22          A.       No.

23          Q.       Did you see any police cars?

24          A.       Yes, I did see.

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Page 31

Page 32

Jalloh

Q. How many police cars did you see?  
A. If I'm not mistaken, it was one.  
Q. How many police officers do you remember were at the scene?  
A. If I am not mistaken, if I still have a good memory, it was two of them.  
Q. Do you know whether your windows, your car windows were open or whether they were shut?  
A. That I don't recall.  
Q. Once you gained consciousness and you recall that you saw two police officers, what did you do?  
A. I didn't do anything, I stayed in my car.  
Q. Did anyone talk to you after you gained consciousness?  
A. The police people.  
Q. Did you first talk to them or did they talk to you?  
A. They are the ones who talk to me.  
Q. What did they tell you?  
A. They asked me if I need an ambulance.

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Page 3

1 Jalloh

2 Q. Mr. Jalloh, you called Mr. Bah on

3 his cell phone, how long did it take for Mr.

4 Bah to come to the scene of the accident

5 approximately?

6 A. I couldn't calculate, indicate how

7 long it took him.

8 Q. Was it less than 30 minutes

9 approximately, was it less 30 minutes, was it

10 more than 30 minutes if you can approximate

11 for me?

12 A. It was more than 30 minutes.

13 Q. Was it more than an hour?

14 A. Yes.

15 Q. Was it more than two hours?

16 A. It was one hour and a few minutes,

17 it wasn't close to two hours.

18 Q. Okay.

19 When you called Mr. Bah on his

20 cell phone, what did you tell him?

21 A. I told him, I said, "Somebody hit

22 me so could you come and take me home?"

23 Q. What did he say?

24 A. He said yes.

25 Q. Once Mr. Bah arrived at the scene

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1 Jalloh  
 2 driver (sic).  
 3 Q. When you talked to the police  
 4 officer or police officers, did they ask you  
 5 any questions about this incident?  
 6 A. They did ask me.  
 7 Q. What did they ask you?  
 8 A. They asked me, "How did the driver  
 9 of the other car hit you?"  
 10 Q. What did you tell them?  
 11 A. I told him, I said, "I was  
 12 stopping at the red light waiting for the  
 13 light to turn green and the other driver hit  
 14 me. I mean its not like we are going one next  
 15 to another, I was just stopping and he hit  
 16 me."  
 17 Q. Okay.  
 18 How would you describe the impact?  
 19 A. I would say it was heavy.  
 20 Q. Did you at any point see what part  
 21 of your car was hit by the other vehicle?  
 22 A. At that time I didn't see. When  
 23 he hit me right there, I didn't see where I  
 24 was hit.  
 25 Q. When you left your car, what did

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1 Jalloh  
 2 you do? Meaning did you go directly to Mr.  
 3 Bah's car or did you look at your car?  
 4 A. I went directly to Mr. Bah's car.  
 5 Q. Apart from those two police  
 6 officers, did you talk to anyone else?  
 7 A. I don't recall.  
 8 Q. Okay.  
 9 Once you were in Mr. Bah's car,  
 10 where did you go?  
 11 A. I went to the place where I live,  
 12 where I used to live.  
 13 Q. Where is that?  
 14 A. 108 East Clark Place.  
 15 Q. Mr. Jalloh, when you were in Mr.  
 16 Bah's car did you feel any pain?  
 17 A. I had pain.  
 18 Q. Where?  
 19 A. (Indicating) Here to the back,  
 20 head, and all the way to my back going to my  
 21 legs.  
 22 Q. How long did it take you if you  
 23 can approximate for me, how long did it take  
 24 you to get home from the scene of the accident  
 25 and your place? In other words, if you can

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1 Jalloh  
 2 tell me how long, how much time did you spend  
 3 in Mr. Bah's car?  
 4 A. Did you say how long?  
 5 Q. Approximately how long did it take  
 6 you to get home from the scene of the  
 7 accident?  
 8 A. At that time I couldn't  
 9 approximate.  
 10 Q. Would you know which route you  
 11 took while you were driving home?  
 12 A. Yes.  
 13 Q. Which route was that?  
 14 A. Jerome.  
 15 Q. Are you familiar with that area,  
 16 in other words, had you been to that area  
 17 before, prior to the accident?  
 18 A. Yes, I know.  
 19 Q. Once you got home, what happened  
 20 next, what did you do?  
 21 A. I lay down.  
 22 Q. Okay.  
 23 Now, at some point you went to see  
 24 a doctor, correct?  
 25 A. Yes.

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Page 39  
 1 Jalloh  
 2 Q. When was it?  
 3 A. The next day of that, the next day  
 4 in the morning.  
 5 Q. Why did you go see a doctor?  
 6 A. Because I was feeling pains, a lot  
 7 of pains.  
 8 MR. McCABE: Can we take a short  
 9 break for one minute.  
 10 (Whereupon, an off-the-record  
 11 discussion was held.)  
 12 (Time noted: 11:49 a.m.)  
 13 (Time noted: 11:56 a.m.)  
 14 Q. Mr. Jalloh, at some point the next  
 15 day you went to see a doctor, correct?  
 16 A. Yes.  
 17 Q. Do you remember the name of that  
 18 doctor?  
 19 A. No.  
 20 Q. Okay.  
 21 If I told you that it was Dr.  
 22 Greenfield, would that refresh your  
 23 recollection?  
 24 A. No, I don't recall the doctor's  
 25 name.

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Jalloh

1 Q. Was it Dr. Crystal?  
 2 A. I have seen a lot of doctors.  
 3 What's happening is they are going  
 4 to tell me their names, but its very difficult  
 5 for me to remember or memorize their names.  
 6 Q. Let me ask you this way.  
 7 How did you find out about this  
 8 doctor?  
 9 A. One of my friends told me about  
 10 the doctor.  
 11 Q. Who was that friend?  
 12 A. It was Mamadou Diallo.  
 13 Q. In other words, it was a  
 14 recommendation, correct?  
 15 A. Yes.  
 16 Q. In other words, you asked your  
 17 friend if he knows any doctor and he gave you  
 18 this number, correct?  
 19 A. Yes.  
 20 Q. You called this doctor and you  
 21 asked him if you can come for an appointment,  
 22 correct?  
 23 A. Yes.  
 24 Q. Okay.

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1 Jalloh  
 2 Where was the doctor located at  
 3 the time?  
 4 A. Grand Concourse.  
 5 Q. How did you get there?  
 6 A. I took a taxi.  
 7 Q. Once you got there, what did the  
 8 examination consist of?  
 9 A. Lots of things was done for me  
 10 over there. I remember they put some hot pad  
 11 here (indicating) to the back and to the neck  
 12 here, and --  
 13 Q. What else?  
 14 THE INTERPRETER: I don't know that  
 15 name in Fulani.  
 16 A. Something like a needle they put  
 17 in there.  
 18 THE INTERPRETER: Sorry.  
 19 Q. Mr. Jalloh, did you receive any  
 20 medication while you were examined?  
 21 A. That day like I told you what they  
 22 did for me was to put things on my body, the  
 23 hot pad, and in particular the needle. And  
 24 also I was given like a Tylenol and something  
 25 was prescribed for me.

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Page 43

Jalloh

1 Q. Do you know, would you recall the  
 2 name of the prescription drug?  
 3 A. I don't recall.  
 4 Q. Okay.  
 5 Did you see the doctor again  
 6 following this first examination?  
 7 A. Yes, many times.  
 8 Q. Would you know approximately how  
 9 many times?  
 10 A. Three months complete I'm seeing  
 11 this doctor, I was even put, I even had an MRI  
 12 for that.  
 13 Q. When you say three months, does it  
 14 mean three months following your first visit?  
 15 A. Three months total I was seeing  
 16 this doctor.  
 17 Q. Okay.  
 18 During those three months how  
 19 often did you see your doctor, was it once a  
 20 week, once a month, every other day?  
 21 A. I used to see the doctor like  
 22 three times a week.  
 23 Q. Do you remember whether the doctor  
 24 was a female or a male?

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Page 44

Jalloh

1 A. Female, some of the time.  
 2 Q. The first time you went to see  
 3 that particular doctor, do you remember  
 4 whether the doctor was a female or a male?  
 5 A. It was a female.  
 6 Q. Okay.  
 7 If I told you that her name was  
 8 Dina Nelson, would that refresh your  
 9 recollection?  
 10 A. If you tell me that's her name I'm  
 11 not going to argue, but --  
 12 Q. All right.  
 13 During those three months, did you  
 14 see any other doctors except for those you  
 15 visited at Grand Concourse?  
 16 A. You mean from a different  
 17 hospital?  
 18 Q. Did you go to any different  
 19 providers or did you always go to the same  
 20 place at Grand Concourse?  
 21 A. Grand Concourse, that's where I  
 22 went to and where I had also the MRI.  
 23 Q. Okay.  
 24 Mr. Jalloh, would you recall

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1 Jalloh  
 2 whether you were recommended to have any  
 3 rehabilitation by those doctors?  
 4 A. I was recommended to go somewhere  
 5 that was in Tremont, but that appointment did  
 6 not happen.  
 7 Q. Okay.  
 8 Did you participate in any  
 9 rehabilitation therapy following the accident?  
 10 A. Yes, I did, at Grand Concourse.  
 11 Q. What did this therapy consist of?  
 12 A. For the therapy it is something  
 13 that they bring, they put around my neck and  
 14 also my back and I'm laying down. So after  
 15 that also they use a needle to press those  
 16 areas of my back and also my neck, and also  
 17 they massage me.  
 18 Q. Following the therapy did you feel  
 19 that your health condition started to improve?  
 20 A. Just a little bit. It was better  
 21 than the day it first happened to me, but not  
 22 completely.  
 23 Q. So was there any reason why you  
 24 stopped seeing your doctors and why you  
 25 stopped participating in the rehabilitation

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1 Jalloh  
 2 therapy?  
 3 A. Because I had been there a lot of  
 4 times, many times.  
 5 Q. Okay.  
 6 When was the last time that you  
 7 participated in therapy, if you know  
 8 approximately?  
 9 A. I don't recall.  
 10 Q. As of now how, do you feel?  
 11 A. To the present time I have pain.  
 12 Q. Where do you have pain?  
 13 A. The place I had pain before is  
 14 still the same place.  
 15 Q. If you can tell us again where  
 16 that was?  
 17 A. (Indicating).  
 18 MR. McCABE: The neck and upper  
 19 back.  
 20 A. The neck and upper back, the  
 21 middle of the back --  
 22 THE INTERPRETER: And pointing to  
 23 the legs, everything.  
 24 Q. Are you currently taking any  
 25 prescription medication?

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Page 47  
 1 Jalloh  
 2 A. Right now Ben Gay, that's the only  
 3 thing I'm putting on those areas.  
 4 Q. How often do you take Ben Gay?  
 5 A. Every day before I go to bed I use  
 6 that.  
 7 Q. What is Ben Gay for?  
 8 A. Its because of the pain.  
 9 Q. Are you currently participating in  
 10 any therapy?  
 11 A. No.  
 12 Q. Okay.  
 13 Are there any activities that you  
 14 were able to do prior to the incident that you  
 15 are unable to do now?  
 16 A. Yes.  
 17 Q. What are those activities?  
 18 A. Like for example, I used to like  
 19 bend my knees and sit on like if when I pray,  
 20 but now I can't do that.  
 21 Q. Anything else?  
 22 A. That's all.  
 23 And also if I'm walking, I walk a  
 24 little bit gingerly, I cannot walk straight.  
 25 MR. McCABE: Can you read that

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Page 48  
 1 Jalloh  
 2 back, please.  
 3 (Record read.)  
 4 MR. McCABE: Thank you.  
 5 Q. Have you ever met a person called  
 6 Thomas Wendel?  
 7 A. It is possible that I met somebody  
 8 and that happened to be the name, but I don't  
 9 recall the name.  
 10 Q. Do you know, Mr. Jalloh, that Mr.  
 11 Wendel is the defendant in this action?  
 12 A. I don't understand, what do you  
 13 mean, the accident?  
 14 Q. No, I'm talking about, do you  
 15 know -- let me ask you this.  
 16 Have you ever spoken to the  
 17 defendant in this action? In other words,  
 18 have you ever spoken to the driver of the  
 19 other vehicle that's --  
 20 A. No, I have never.  
 21 Q. Never ever?  
 22 A. No.  
 23 Q. That's all I need to know.  
 24 I'll ask you some follow up  
 25 questions. At the time of the incident when

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1 Jalloh  
 2 C E R T I F I C A T E  
 3 STATE OF NEW YORK )  
 4 : ss.  
 5 COUNTY OF NEW YORK )

6  
 7 I, Jeremy Frank, a Notary Public  
 8 within and for the State of New York, do  
 9 hereby certify:  
 10 That ABOUBACAR JALLOH, the witness whose  
 11 deposition is hereinbefore set forth, was duly  
 12 sworn by me and that such deposition is a true  
 13 record of the testimony given by the witness.

14 I further certify that I am not related  
 15 to any of the parties to this action by blood  
 16 or marriage, and that I am in no way  
 17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereby  
 19 set my hand on the 8th day of February, 2008.

20   
 21 JEREMY FRANK, MPM

22 Esquire Deposition Services  
 1-800-944-9454

1 Jalloh  
 2 \*\*\* ERRATA SHEET \*\*\*

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 4 NAME OF CASE: JALLOH v. WENDEL  
 5 DATE OF DEPOSITION: February 8th, 2008  
 6 NAME OF WITNESS: JALLOH

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19 ABOUBACAR JALLOH  
 20 Subscribed and sworn to before me  
 21 this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

22 JEREMY FRANK My Commission Expires:  
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<b>A</b>	<b>appointment</b> 41:22 45:5 <b>approaching</b> 25:6 <b>approximate</b> 26:3 35:10 38:23 39:9 49:13 <b>approximately</b> 11:12 15:19 15:23,24 16:3 16:5 23:2 25:10,12 26:12,25 30:8 30:20 35:5,9 39:5 43:9 46:8 <b>area</b> 25:17 39:15,16 <b>areas</b> 45:16 47:3 <b>argue</b> 44:12 <b>arrival</b> 36:6 <b>arrived</b> 35:25 36:13 <b>asked</b> 31:24 32:21,23,25 37:8 41:17,22 <b>asking</b> 5:15 15:5 17:19,20 23:2 49:19,20 <b>assigned</b> 19:17 <b>attorney</b> 5:14 15:14 <b>Attorneys</b> 3:6 3:12 <b>August</b> 5:17 17:2,5 18:7 18:15 19:8 20:8,14 22:2 26:24 <b>Avenue</b> 2:7 3:7 11:16,17 21:25 24:3,5 24:9,21,22 25:18 <b>average</b> 49:12 49:14,15,22	<b>A-I-i-m-o-u</b> 7:25 <b>a.m</b> 2:3 18:5,6 40:12,13 <b>B</b> <b>B</b> 5:2,6,6 <b>back</b> 10:23 24:17 29:18 38:19,20 42:11 45:14 45:16 46:19 46:20,21 48:2 <b>bad</b> 49:14 <b>bag</b> 29:3,5 <b>Bah</b> 8:2 13:17 33:25 34:7,8 35:2,4,19,25 36:13 50:8 <b>Bah's</b> 36:5 38:3 38:4,9,16 39:3 <b>based</b> 49:7 <b>bed</b> 47:5 <b>belt</b> 28:10,12 28:14,18,19 29:14 <b>Ben</b> 47:2,4,7 <b>bend</b> 47:19 <b>Bernstein</b> 2:7 3:4 <b>better</b> 45:20 <b>birth</b> 8:25 22:9 <b>bit</b> 16:23 26:21 45:20 47:24 <b>blood</b> 53:15 <b>body</b> 29:11 42:22 <b>born</b> 8:20,22 <b>brake</b> 28:6 <b>brakes</b> 28:2,3 <b>break</b> 6:18 40:9 <b>bring</b> 45:13 <b>Broad</b> 3:13 <b>Bronx</b> 7:10 11:18 19:3 <b>Brooklyn</b> 16:18 <b>brought</b> 50:24	<b>buckle</b> 28:21 <b>Budin</b> 2:6 3:4 <b>business</b> 10:16 10:22 11:3,6 11:8 <b>buy</b> 10:19 <b>B-a-h</b> 8:2 33:24 <b>B1</b> 10:3 <b>B2</b> 10:3,5,6,12 <b>C</b> <b>C</b> 3:2 5:6 53:2,2 <b>cab</b> 13:11 18:18 <b>calculate</b> 35:6 <b>call</b> 18:13,14 <b>called</b> 5:6 34:10 35:2,19 41:21 48:5 <b>Canal</b> 51:11 <b>car</b> 13:12,19,24 14:3,4 19:14 19:16,17,18 19:20,22,25 <b>belt</b> 28:10,12 28:14,18,19 29:14 <b>Ben</b> 47:2,4,7 <b>bend</b> 47:19 <b>Bernstein</b> 2:7 3:4 <b>better</b> 45:20 <b>birth</b> 8:25 22:9 <b>bit</b> 16:23 26:21 45:20 47:24 <b>blood</b> 53:15 <b>body</b> 29:11 42:22 <b>born</b> 8:20,22 <b>brake</b> 28:6 <b>brakes</b> 28:2,3 <b>break</b> 6:18 40:9 <b>bring</b> 45:13 <b>Broad</b> 3:13 <b>Bronx</b> 7:10 11:18 19:3 <b>Brooklyn</b> 16:18 <b>brought</b> 50:24	20:18,25 <b>checked</b> 21:11 <b>citizen</b> 9:3 <b>city</b> 8:22 <b>Civ</b> 1:7 <b>claim</b> 49:25 <b>Clark</b> 7:10 38:14 <b>clear</b> 22:20,21 25:21 <b>client</b> 19:19 <b>close</b> 9:17 35:17 <b>collision</b> 21:16 <b>color</b> 20:4 <b>come</b> 9:12,18 35:4,22 41:22 <b>Commission</b> 54:22 <b>company</b> 13:11 18:13,14,20 34:4 <b>complete</b> 43:11 <b>completely</b> 27:11 45:22 <b>Conakry</b> 8:24 <b>Concourse</b> 42:4 44:16,21 44:22 45:10 <b>condition</b> 45:19 <b>conditions</b> 22:17 <b>conducted</b> 16:20 <b>consciousne...</b> 29:25 30:3,5 30:12,14 31:12,18 <b>consist</b> 42:8 45:11 <b>consume</b> 22:7 22:11 <b>contact</b> 34:8 <b>corporation</b> 11:7 <b>correct</b> 7:6
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10:7 19:3 23:23 26:8,18 39:24 40:15 41:15,19,23 <b>counsel</b> 3:9 4:3 15:5,12 <b>count</b> 17:16 25:4 30:21 <b>country</b> 9:23 <b>COUNTY</b> 53:5 <b>court</b> 1:2 4:15 5:21 6:3 <b>Crystal</b> 41:2 <b>current</b> 7:9 9:7 12:14,15 <b>currently</b> 46:24 47:9 <b>customer</b> 23:9 23:9 <b>customers</b> 23:17,20 49:8 49:10,16,20 <b>C-o-n-a-k-r-y</b> 8:24	<b>deposition</b> 1:13 2:5 4:5 4:12 5:20 6:19 53:11,12 54:4 <b>describe</b> 37:18 <b>designated</b> 19:13 <b>Diallo</b> 41:13 50:22 <b>difference</b> 15:15 <b>different</b> 15:13 44:17,19 49:5 <b>difficult</b> 41:5 <b>Dina</b> 44:9 <b>direction</b> 23:12 23:14 24:7 <b>directly</b> 38:2,4 <b>discussion</b> 18:4 40:11 51:18 52:10 <b>DISTRICT</b> 1:2,3 <b>divulged</b> 34:25 <b>doctor</b> 39:24 40:5,15,18 41:9,11,18,21 42:2 43:6,12 43:17,20,22 43:24 44:4,5 <b>doctors</b> 41:3 44:15 45:3,24 <b>doctor's</b> 40:24 <b>doing</b> 17:5 18:16 27:14 <b>door</b> 32:9,11 32:11,13,16 32:17,18 <b>DOUMBOUYA</b> 3:19 <b>Downtown</b> 23:13 24:8 <b>Dr</b> 40:21 41:2 <b>drank</b> 22:9 <b>drive</b> 13:14 33:11 <b>driver</b> 18:18 19:13 23:7	28:5 29:13 33:15 36:20 36:24 37:2,8 37:13 48:18 49:9 <b>driver's</b> 14:7,9 14:12,20 15:3 16:3 32:18 <b>driving</b> 13:9 39:11 <b>drove</b> 19:18 23:15 49:8 50:15,19 <b>drug</b> 43:3 <b>drugs</b> 22:12 <b>dry</b> 22:20,21 <b>duly</b> 5:2,7 53:11	<b>E</b> <b>E</b> 3:2,2 10:3 53:2,2 <b>Early</b> 18:9 <b>earnings</b> 50:2 <b>easier</b> 6:3 <b>East</b> 7:10 38:14 <b>eat</b> 26:21 <b>education</b> 11:20,23,25 <b>effect</b> 4:14 <b>eight</b> 11:22 27:2 <b>English</b> 5:3,5 16:21,22 20:5 <b>entered</b> 9:21 9:23 10:23 11:13 <b>ERRATA</b> 54:2 <b>ESQ</b> 3:9,15 <b>establish</b> 15:3 34:8 <b>evening</b> 26:7 <b>exactly</b> 17:15 19:12 <b>examination</b> 5:10 42:8 43:7 <b>examined</b> 5:8	53:7,22 54:22 <b>Friday</b> 1:15 <b>friend</b> 41:12,18 50:13,20 <b>friends</b> 8:5 13:13,15 41:10 <b>front</b> 25:4,22 <b>Fulani</b> 5:4,4 21:10 42:15 <b>further</b> 4:7,11 53:14
--	--	--	---	--

31:7 49:14 <b>Grand</b> 42:4 44:16,21,22 45:10 <b>green</b> 20:5 27:16 37:13 <b>Greenfield</b> 40:22 <b>ground</b> 5:20 <b>guess</b> 20:19 <b>Guinea</b> 8:21,23 10:23 11:21 <b>guy</b> 21:10	<b>highest</b> 11:19 <b>hit</b> 24:17 27:10 28:5 29:11,13 29:20 35:21 37:9,13,15,21 37:23,24 <b>hold</b> 14:6 <b>home</b> 18:8 33:10,11,12 33:13 35:22 38:24 39:6,11 39:19 <b>hospital</b> 44:18 <b>hot</b> 42:10,23 <b>hour</b> 30:10 35:13,16 <b>hourly</b> 49:6 <b>hours</b> 17:6,22 22:8,12 26:18 26:23 27:2 35:15,17 <b>house</b> 18:10 22:8,13,25 23:10 26:12 26:14	38:19 42:11 46:17 <b>individuals</b> 8:4 <b>interested</b> 53:17 <b>interpret</b> 5:3 <b>interpreter</b> 3:19 5:9 42:14,18 46:22 <b>intersection</b> 24:22 25:11 25:17 27:4 <b>involved</b> 10:17 24:14 36:21 <b>involving</b> 23:22 <b>issued</b> 14:15 14:16,17 15:5 15:7,8 <b>I-b-r-a-h-m-a</b> 33:19	49:1 50:1,4 51:1 52:1,14 53:1,10 54:1 54:3,4,19 <b>Jeremy</b> 1:22 2:8 53:7,22 54:22 <b>Jerome</b> 24:2,5 24:6,9,21,22 25:17 39:14 <b>JOB</b> 1:23 <b>June</b> 9:2	<b>leave</b> 22:3 33:6 33:8 36:6,17 <b>leaving</b> 22:8,13 <b>left</b> 22:25 23:10 26:11,13 28:7 37:25 50:7 <b>legs</b> 38:21 46:23 <b>let's</b> 13:2 16:25 26:15 49:12 <b>level</b> 11:20 15:13 <b>license</b> 14:7,9 14:12,14,17 14:21 15:2,4 15:5,7,7,8 16:3,7,14 <b>light</b> 24:16 25:7 25:8,9,11 27:5,15 37:12 37:13 <b>lights</b> 24:21,24 24:25 25:3,5 <b>Lincoln</b> 14:2 19:23 20:2 <b>LINE</b> 54:5 <b>listening</b> 27:20 <b>little</b> 16:23 26:20 45:20 47:24 <b>live</b> 7:19,21 38:11,12 <b>lived</b> 7:11 <b>livery</b> 18:18 <b>lives</b> 7:17 <b>living</b> 12:17,18 18:16 <b>LLP</b> 2:7 3:5 <b>located</b> 18:25 21:22 25:17 42:2 <b>long</b> 7:11 14:13 19:8 35:3,7 38:22,23 39:2 39:4,5 <b>look</b> 38:3 <b>looking</b> 27:9 <b>lose</b> 29:25	
<b>H</b> <b>H</b> 5:6 <b>hand</b> 53:19 <b>hands</b> 27:18 <b>happen</b> 23:8 24:15 45:6 <b>happened</b> 29:13,14,18 29:23 33:7,9 39:19 45:21 48:8 50:6,10 50:23 51:24 <b>happening</b> 41:4 <b>head</b> 5:24 29:15,20 38:20 <b>heading</b> 23:2 24:7 <b>health</b> 8:15,17 12:20 45:19 <b>heavy</b> 25:19 37:19 <b>held</b> 2:5 18:4 40:11 51:18 52:10 <b>help</b> 8:11 36:16 <b>helped</b> 36:18 <b>Hendrick</b> 3:15 5:13 <b>hereinbefore</b> 53:11 <b>hereto</b> 4:4 <b>higher</b> 11:24	<b>I</b> <b>Ibrahma</b> 33:19 <b>illegally</b> 15:2 <b>immediately</b> 27:13 <b>immigration</b> 9:7 <b>impact</b> 27:6,8 29:10 30:2,6 37:18 <b>important</b> 5:22 6:5 <b>improve</b> 45:19 <b>incident</b> 20:8 28:4,25 29:6 36:5,22 37:5 47:14 48:25 50:8 <b>indicate</b> 35:6 <b>indicating</b> 28:16,22 29:15,19	<b>J</b> <b>Jalloh</b> 1:5,13 2:5 5:1,12 6:1 6:10 7:1,4,5 8:1,3,20 9:1 10:1 11:1,19 12:1,7 13:1 14:1,6 15:1 16:1 17:1,4 18:1,7 19:1 20:1 21:1 22:1,2,25 23:1 24:1 25:1,24 26:1 27:1 28:1 29:1 30:1,4 31:1 32:1 33:1 34:1 35:1,2 36:1 37:1 38:1,15 39:1 40:1,14 41:1 42:1,19 43:1 44:1,25 45:1 46:1 47:1 48:1,10	<b>K</b> <b>knees</b> 47:19 <b>know</b> 5:21 6:20 10:13 14:3,14 14:25 15:4,8 19:12,24 20:6 20:10 21:10 21:21 23:6 24:20,23 25:2 25:3,10 29:22 30:9 31:8 33:7,16 34:4 34:6,7,16 39:10,18 42:14 43:2,9 46:7 48:10,15 48:23 50:6,12 50:15,23 51:2 51:6,11,14 <b>known</b> 12:6 <b>knows</b> 16:4 41:18 <b>Kupferberg</b> 2:6 3:4	<b>L</b> <b>L</b> 5:6,6 <b>language</b> 12:4 16:19 <b>lap</b> 28:13,13,13 28:17 <b>LAW</b> 3:11 <b>lay</b> 39:21 <b>laying</b> 45:14 <b>learning</b> 12:4	

<b>lost</b> 29:23 30:3 50:2	21:9,11,21	7:24	<b>NRB</b> 1:7	38:8 39:22
<b>lot</b> 40:6 41:3 46:3	<b>medication</b> 42:20 46:25	N	<b>number</b> 14:4 34:14 41:19 49:19	40:20 41:25 43:5,18 44:7 44:24 45:7
<b>Lots</b> 42:9	<b>memorize</b> 41:6	<b>N</b> 3:2	<b>NY</b> 3:8,14	46:5 47:12 50:3 51:13
<b>lucky</b> 49:4	<b>mentioned</b> 27:3 32:6	<b>name</b> 5:13 7:2	O	52:4
<b>M</b>	<b>merchandises</b> 10:19,20	7:5,6 10:2 11:2 12:7	<b>once</b> 30:14	
<b>M</b> 5:2,2,2	<b>merchant</b> 9:24 9:24 10:16	21:8,13,14 33:16,18,20	31:12 35:25	
<b>Madison</b> 2:7 3:7	<b>merchant's</b> 10:7	33:21,22,23 40:17,25	<b>object</b> 14:22 34:19	36:13 38:9 39:19 42:7
<b>maintenance</b> 20:11	<b>messes</b> 27:12	42:15 43:3 44:8,11 48:8	<b>objection</b> 9:4,9 10:9	43:20,21 50:7 50:24
<b>major</b> 33:7	<b>met</b> 48:5,7	48:9 50:20,22	<b>objections</b> 4:8	<b>ones</b> 13:13
<b>making</b> 49:3	<b>middle</b> 46:21	51:2,5,6,8	<b>obtain</b> 14:11 14:20 16:13	31:22 32:15
<b>male</b> 43:25 44:5	<b>mind</b> 27:11 29:24	54:3,4	<b>occur</b> 23:25	<b>one-way</b> 24:10
<b>MALONEY</b> 3:11	<b>minute</b> 18:2 40:9	<b>names</b> 13:15 41:5,6	<b>occurred</b> 5:17 17:2 25:25	<b>open</b> 31:9 32:7 32:9,9,11
<b>Maloney's</b> 5:14	<b>minutes</b> 35:8,9 35:10,12,16	<b>nature</b> 11:6	26:4	<b>opened</b> 32:13 32:15
<b>Mamadou</b> 3:19 8:2 41:13 50:22	<b>mistaken</b> 10:5 31:3,6 32:14 50:18	<b>neck</b> 42:11 45:13,16 46:18,20	<b>office</b> 5:14	<b>Order</b> 2:8
<b>Manhattan</b> 19:6	<b>money</b> 49:11 49:17	<b>need</b> 6:18 31:24 48:23	<b>officer</b> 32:23 36:10 37:4	<b>outcome</b> 53:17
<b>marriage</b> 53:16	<b>month</b> 15:21 43:21	<b>needle</b> 42:16 42:23 45:15	<b>officers</b> 31:4 31:13 37:4	<b>outside</b> 32:4
<b>massage</b> 45:17	<b>months</b> 13:3,4 13:5,6,8 19:11 43:11 43:14,15,16 43:19 44:14	<b>Nelson</b> 44:9 <b>never</b> 22:9,14 48:20,21	38:6	<b>P</b>
<b>matter</b> 53:17	<b>morning</b> 5:12 17:6,7,8,9,22 18:8,9,12 20:15,16 22:3 40:4	<b>New</b> 1:3,14,14 2:7,8,9 3:8,14 14:9,11 53:3 53:5,8	<b>offices</b> 2:6 3:11	<b>P</b> 1:8 3:2,2
<b>McCABE</b> 3:9 9:4,9 10:8 12:16,24 13:4 14:22 15:9,12 15:18,24 16:2 16:8 17:25 19:6 20:19 21:25 34:19 34:24 40:8 46:18 47:25 48:4 49:17,24 51:16 52:7	<b>oil</b> 20:17,24	<b>nice</b> 22:18	<b>official</b> 12:3	<b>pad</b> 42:10,23
<b>mean</b> 8:8 20:23 24:24 37:14 43:15 44:17 48:13 49:16 51:23	<b>okay</b> 5:18 6:8,9 6:13,21 7:8 8:19 9:25	<b>Nickname</b> 12:10,11	<b>off-the-record</b> 18:3 40:10 51:17 52:9	<b>PAGE</b> 54:5
<b>Meaning</b> 38:2	<b>noon</b> 26:16,17	<b>nicknames</b> 12:9	10:14 11:10	<b>paid</b> 49:6,7
<b>means</b> 20:8	<b>Notary</b> 2:9 4:13 5:7 53:7	<b>nod</b> 5:23	12:5,13 13:4	<b>pain</b> 38:16,17 46:11,12,13
<b>mechanic</b> 21:5	<b>Note</b> 9:4 10:9	<b>noon</b> 26:16,17	13:20 16:12	47:8
	<b>noted</b> 18:5,6 40:12,13	<b>Notary</b> 2:9 4:13 5:7 53:7	16:24 17:10	<b>pains</b> 40:6,7
	51:19,20	<b>Note</b> 9:4 10:9	18:11,19	<b>part</b> 37:20
	52:11	<b>noted</b> 18:5,6 40:12,13	19:21 22:6,15	<b>participate</b> 45:8
	<b>noticed</b> 25:8	51:19,20	22:23 23:5,16	<b>participated</b> 46:7
		52:11	24:12,18	<b>participating</b> 45:25 47:9
		<b>noticed</b> 25:8	25:15,23	<b>particular</b> 13:10 17:4,22
			26:10,22	19:14 26:14
			27:17 28:23	42:23 44:4
			29:9 35:18	49:8
			36:12 37:17	<b>parties</b> 4:4 53:15
				<b>pass</b> 28:20

<b>passed</b> 17:17 17:20 <b>passengers</b> 28:24 <b>Patrick</b> 3:11 5:14 <b>pay</b> 8:18 <b>pays</b> 8:9,10 <b>people</b> 7:19,20 7:21,22,23 30:17,19 31:19 32:15 50:14 <b>period</b> 12:24 13:5 <b>person</b> 13:21 48:5 <b>person's</b> 34:24 <b>pertaining</b> 5:16 <b>PETER</b> 3:9 <b>phone</b> 18:13 27:22,24 34:11,13,25 35:3,20 <b>photographs</b> 51:21 <b>pick</b> 19:19 <b>place</b> 7:10,12 7:15,18 11:15 17:21 21:12 36:15 38:11 38:14,25 44:21 46:13 46:14 51:11 <b>Plaintiff</b> 1:6 3:6 <b>please</b> 6:6,15 6:19 7:2 48:2 <b>point</b> 18:12 23:21 24:13 27:5 29:20 36:6,19 37:20 39:23 40:14 49:25 <b>pointing</b> 46:22 <b>police</b> 30:24 31:2,4,13,19 32:3,8,14,23 36:10 37:3,4	38:5 <b>portion</b> 29:11 29:11 <b>possible</b> 48:7 <b>pray</b> 47:19 <b>preceding</b> 27:14 <b>precise</b> 25:13 26:2,25 49:18 <b>prepared</b> 6:22 <b>prescribed</b> 42:25 <b>prescription</b> 22:12 43:3 46:25 <b>present</b> 3:18 46:11 <b>Presently</b> 12:19 13:12 21:23 <b>press</b> 45:15 <b>prior</b> 19:8 20:14 21:5 22:8,12 28:4 39:17 47:14 <b>privacy</b> 34:21 <b>profession</b> 12:14 <b>professional</b> 21:5 <b>proprietor</b> 11:7 <b>providers</b> 44:20 <b>Public</b> 2:9 4:13 5:8 53:7 <b>purpose</b> 23:3 <b>pursuant</b> 2:8 <b>put</b> 20:16 32:5 42:10,16,22 43:12 45:13 <b>putting</b> 47:3 <b>p.m</b> 26:5,7,17 51:19,20 52:11	10:8,11 15:6 15:20 17:24 20:20 32:21 32:22 33:4 34:20 50:5 <b>questions</b> 5:3 5:15 6:15,23 37:5 48:25 52:6	<b>regularly</b> 20:7 <b>rehabilitation</b> 45:3,9,25 <b>Reisman</b> 2:6 3:4 <b>related</b> 53:14 <b>relationship</b> 8:4 <b>relax</b> 26:20 <b>remember</b> 22:16 24:19 <b>R</b> R 3:2 5:6 53:2 <b>radio</b> 27:20 <b>rarely</b> 12:20,22 <b>rate</b> 49:7 <b>read</b> 47:25 48:3 <b>ready</b> 23:8 <b>reason</b> 6:6 45:23 <b>recall</b> 14:5 16:10 25:14 30:15 31:11 31:13 36:23 38:7 40:24 43:2,4 44:25 46:9 48:9 50:21 <b>receive</b> 11:24 18:13 42:19 <b>received</b> 11:20 <b>recollection</b> 40:23 44:10 <b>recommend...</b> 41:15 <b>recommended</b> 45:2,4 <b>record</b> 6:4 7:3 17:25 28:15 48:3 49:25 51:16 52:8 53:13 <b>red</b> 24:16 25:8 27:5 37:12 <b>reflect</b> 28:16 <b>refresh</b> 40:22 44:9 <b>registration</b> 14:3	<b>S</b> <b>S</b> 3:2 <b>saw</b> 31:13 36:25,25 <b>scene</b> 31:5 35:4,25 38:24 39:6 50:7 51:22 <b>school</b> 12:2,3 <b>sealing</b> 4:4 <b>seat</b> 28:10,12 28:14,18,19 29:18 32:3 <b>see</b> 21:2 27:10 29:7,8 30:17 30:19,22,24 30:25 31:2 36:24 37:20 37:22,23 39:23 40:5,15 43:6,20,22 44:3,15 <b>seeing</b> 30:16 43:11,16 45:24 <b>seen</b> 41:3 <b>selling</b> 11:4 <b>send</b> 33:2 <b>series</b> 5:15 <b>serviced</b> 20:7 20:14 21:4,16 28:3 <b>set</b> 53:11,19 <b>shake</b> 5:24 <b>share</b> 8:10,12 8:16 <b>SHEET</b> 54:2 <b>shining</b> 22:19 <b>shop</b> 21:21 <b>short</b> 40:8 <b>shoulder</b> 28:13 28:17 <b>shut</b> 31:10 32:7 <b>sic</b> 37:2 <b>side</b> 32:18 <b>signed</b> 4:12,14 <b>simple</b> 15:6 16:9
			<b>Q</b> <b>question</b> 4:9 6:7 9:5,10	

sit 47:19	street 3:13 24:4,5,9,10 25:18 51:7,9 51:15	testimony 53:13 <b>Thank</b> 48:4 <b>therapy</b> 45:9 45:11,12,18 46:2,7 47:10	<b>total</b> 25:2 26:24 43:16 <b>tow</b> 50:14 <b>towed</b> 50:12,17 <b>Town</b> 20:2 <b>traffic</b> 24:20,25 25:7,16,19,21	23:13,15 <b>use</b> 13:24 45:15 47:5  <b>V</b>
<b>six</b> 12:25 13:3 13:4,5,8 19:11	<b>streets</b> 17:16 <b>Subscribed</b> 52:16 54:20	<b>thing</b> 47:3 <b>things</b> 15:21 21:2 42:9,22 <b>think</b> 17:23 32:20 36:25 <b>thinking</b> 52:3 <b>Third</b> 51:10,11 <b>Thomas</b> 1:8 48:6	<b>traveled</b> 23:15 <b>Tremont</b> 45:5 <b>trial</b> 4:10 <b>trip</b> 23:3 <b>true</b> 53:12 <b>trying</b> 15:2 <b>turn</b> 27:16 37:13 <b>turned</b> 25:12 <b>two</b> 7:22 13:6 24:11,12 31:7 31:13 35:15 35:17 36:10 38:5	<b>Vandamme</b> 3:15 5:11,13 13:2 14:24 15:11,16,22 15:25 19:7 28:15 34:22 50:3 52:5 <b>vehicle</b> 23:22 24:14,17 32:2 32:4 36:7,21 37:21 48:19 50:7 51:3 <b>visa</b> 9:20,22,24 10:2,3,4,7,12 10:12,16 <b>visit</b> 43:15 <b>visited</b> 44:16 <b>visitor's</b> 10:12 <b>vs</b> 1:7
<b>S</b> 1:3	<b>T</b>	<b>three</b> 19:11 43:11,14,15 43:16,19,23 44:14	<b>two-lane</b> 24:9 <b>Tylenol</b> 42:24 <b>type</b> 9:22 10:3 10:16,20 11:8 13:7,24 19:22 28:12,14	 <b>W</b>
<b>Sow</b> 7:25 21:14 21:17	<b>T</b> 53:2,2 <b>take</b> 6:18 16:13 16:17 22:11 23:9,14 28:19 35:3,22 38:22 38:23 39:5 40:8 47:4 49:12 51:21	<b>time</b> 4:10 6:19 12:24 14:13 14:16,18 18:5 18:6,17,21 19:18 20:7,13 21:5,15 22:3 25:7,25 26:3 26:13 27:8,11	<b>T-shirt</b> 10:21	<b>wait</b> 6:6 <b>waiting</b> 37:12 <b>waived</b> 4:6 <b>walk</b> 47:23,24 <b>walking</b> 47:23
<b>Sow's</b> 21:21	<b>taken</b> 50:11 <b>talk</b> 6:5 16:25 31:17,20,21 31:22 32:10 36:9,20 38:6	28:3,4,6,25 29:6,7,10,22 33:5,6,25 34:5,8 36:4,4 36:5 37:22 39:2,8 40:12	<b>U</b>	<b>want</b> 5:19 15:20 <b>wasn't</b> 35:17 <b>water</b> 20:25 <b>way</b> 16:4 22:4 23:18 38:20 41:7 53:16
<b>speak</b> 16:22,23	<b>talked</b> 32:3 37:3 50:13 <b>talking</b> 27:22 32:8 48:14	40:13 42:3 44:2,3 46:6 46:11 48:25 51:19,20 52:2 52:11	<b>understands</b> 15:19	<b>ways</b> 24:11,12 <b>wearing</b> 28:10 28:13,17 <b>weather</b> 22:16 22:18
<b>specific</b> 15:20 15:23	<b>taxi</b> 13:9 23:7 42:6 49:9 <b>tell</b> 6:15 17:15	<b>times</b> 26:20 43:8,10,23 46:4,4	<b>United</b> 1:2 9:3 9:12,18,21	<b>Webster</b> 21:23 21:25
<b>state</b> 2:9 7:2 53:3,8	22:24 23:12 25:19 26:2,13 30:8 31:23 32:20 35:20 37:10 39:2	<b>tires</b> 20:25 <b>today</b> 5:15 6:11 6:23	10:17,23 11:13,25	<b>week</b> 43:21,23
<b>stated</b> 10:15 11:11 26:11	41:5 44:11 46:15	<b>told</b> 33:5,8 35:21 37:11 40:21 41:10	<b>upper</b> 46:18,20	<b>weeks</b> 12:25
<b>statement</b> 10:9	<b>test</b> 16:13,16 16:17,19	42:21 44:8	<b>Uptown</b> 17:13 17:14,15	
<b>States</b> 1:2 9:3 9:13,19,22 10:18,24 11:13,25	<b>testified</b> 5:8			
<b>status</b> 9:8,11				
<b>stayed</b> 11:15 31:15				
<b>steering</b> 29:16 29:17,21				
<b>STIPULATED</b> 4:2,7,11				
<b>stomach</b> 28:21				
<b>stopped</b> 24:16 45:24,25				
<b>stopping</b> 27:15 37:12,15				
<b>straight</b> 47:24				

<b>Wendel</b> 1:8 48:6,11 54:3 <b>went</b> 17:9,15 17:17,21 23:11,13 29:15 33:10 38:4,11 39:23 40:15 44:3,23 <b>wheel</b> 27:19 29:15,16,17 29:21 <b>wheels</b> 20:18 20:24 <b>WHEREOF</b> 53:18 <b>window</b> 32:7,9 <b>windows</b> 31:8 31:9 <b>witness</b> 5:7 15:10 16:6 28:16 53:10 53:13,18 54:4 <b>words</b> 5:23 8:12 38:25 39:16 41:14 41:17 48:17 <b>work</b> 12:19,23 13:6,7,10 17:9,12,18 23:4,8,11 26:23 34:2 <b>worked</b> 19:10 <b>working</b> 8:16 8:17 11:9 15:13 18:17 18:20 19:9,14 21:3 26:18,19 34:5 49:2	<b>yellow</b> 25:9,12 <b>York</b> 1:3,14,14 2:7,8,10 3:8 3:14 14:9,11 53:3,5,8 <b>\$</b> <b>\$90</b> 49:23 <b>0</b> <b>07</b> 1:7 <b>1</b> <b>10</b> 9:15 11:12 <b>10:41</b> 2:3 <b>10004</b> 3:14 <b>10016</b> 3:8 <b>108</b> 7:10 38:14 <b>11</b> 22:4 26:18 <b>11-something</b> 26:15 <b>11:00</b> 26:5,7,17 <b>11:03</b> 18:5 <b>11:04</b> 18:6 <b>11:49</b> 40:12 <b>11:56</b> 40:13 <b>112</b> 2:7 3:7 <b>12</b> 22:5 26:16 26:17 <b>12:18</b> 51:19 <b>12:19</b> 51:20 <b>12:20</b> 52:11 <b>137th</b> 51:10,14 <b>170th</b> 21:24 <b>181st</b> 19:2 <b>182nd</b> 24:2,5 24:22 25:18 <b>2</b> <b>2000</b> 7:13 <b>2006</b> 5:17 17:3 17:5 18:7,15 19:8 20:8,14 22:2 26:24 <b>2008</b> 1:15 2:2 52:17 53:19 54:4,20 <b>2202</b> 3:13 <b>24</b> 22:8,12	<b>3</b> <b>30</b> 35:8,9,10,12 <b>4</b> <b>4091</b> 1:7 <b>5</b> <b>5th</b> 9:2 <b>6</b> <b>63</b> 9:2 <b>672356a</b> 1:23 <b>7</b> <b>7th</b> 5:17 17:2,5 18:7,15 19:8 20:8,14 22:2 26:24 <b>8</b> <b>8th</b> 1:15 2:2 53:19 54:4 <b>9</b> <b>90</b> 3:13 <b>97</b> 20:2,3		
<b>X</b> <b>X</b> 49:19	<b>2000</b> 7:13 <b>2006</b> 5:17 17:3 17:5 18:7,15 19:8 20:8,14 22:2 26:24 <b>2008</b> 1:15 2:2 52:17 53:19 54:4,20 <b>2202</b> 3:13 <b>24</b> 22:8,12			
<b>Y</b> <b>Y</b> 5:2 <b>year</b> 15:21 19:24 <b>years</b> 9:15 11:12,22				

## EXHIBIT H

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendant.

X  
**RADIOLOGIST'S  
AFFIRMATION**

Index No.: 07 Civ. 4091(NRB)

I, ALAN GREENFIELD, M.D., affirm the following under the penalties of perjury:

1. I am a Radiologist, duly licensed by the State of New York to practice medicine.
2. I am affiliated with U.S. Diagnostic, whose offices are located at 1963 Grand Concourse, Suite #LL, Bronx, New York 10453.
3. I took or supervised the taking of the MRIs of the cervical spine and lumbar spine of ABOUBACAR JALLOH, the plaintiff in this action.
4. Upon review of the MRI of the cervical spine taken on August 16, 2006, my findings were as follows:
  - a) Straightening of cervical lordosis;
  - b) Central disc herniations at C3-C4 and C5-C6, deforming the dural sac, with the latter nearly in contact with the cervical cord; and
  - c) Bulging disc at C4-C5 with flattening of the dural sac.
5. Upon review of the MRI of the lumbar spine taken on September 6, 2006, my findings were as follows:
  - a) Bulging discs from L4 through S1, associated with bilateral foraminal narrowing at L4-L5.
6. If I am called upon to testify in Court, my testimony will reflect the statements listed above.

7. I, the undersigned, certify that the foregoing report is true to the best of my knowledge. I am a duly licensed Board Certified Radiologist in the State of New York and I hereby affirm under the penalties of perjury the contents of this report to be true.

Dated: New York, New York  
May 20, 2008



ALAN GREENFIELD, M.D.



**U.S. DIAGNOSTIC**

1863 GRAND CON COURSE SUITE 8LL • BRONX, NY 10453 • OFF: (718) 731-2500 / FAX: (718) 731-3100  
SERVING HEALTH CARE NEEDS OF YOUR FAMILY

Dr. Monagan

8/16/2006

RE: Jalloh, Aboubacar  
DOB: 5/3/1963  
File #: 2400  
DOS: 8/16/2006

Dear Doctor:

The following is a report on the above patient who was examined on 8/16/2006.

#### MRI OF THE CERVICAL SPINE:

**Technique:** Sagittal T1 and either gradient echo T2\* or FSE T2 sagittal, T1 and T2 axial angled through disc spaces.

**Findings:** There is straightening of cervical lordosis. Central disc herniations are present at C3-C4 and C5-C6 indenting the dural sac. There is near contact with the cord at C3-C4. A bulging disc at C4-C5 is seen with flattening of the dural sac. The cord is normal in position and signal. There is no central spinal stenosis. No fracture, bone marrow edema, or replacement is demonstrated. The neural foramina are patent on both sides. There is no fracture or paraspinal mass.

#### IMPRESSION:

1. Straightening of cervical lordosis.
2. Central disc herniations are present at C3-C4 and C5-C6, deforming the dural sac, with the latter nearly in contact with the cervical cord.
3. Bulging disc at C4-C5 with flattening of the dural sac.

Thank you for the courtesy of this referral.  
\*\*\*\*\* Electronically Signed \*\*\*\*\*

08/20/06 09:48

Alan Greenfield, MD

Diplomate, American Board of Radiology

PAGE 06  
P.05/06

14:16  
00/00/2006  
U.S. DIAGNOSTIC

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SEP-21-2006 14:16  
PAGE 06  
P.05/06



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9/6/2006

Dr. Monagan  
334 Grand Concourse  
Bronx, NY 10451  
718-590-5900  
718-590-6399

RE: Jalloh, Aboubacar  
DOB: 5/3/1973  
File #: 2747  
DOS: 9/6/2006

Dear Doctor:

The following is a report on the above patient who was examined on 9/6/2006.

**MRI OF THE LUMBAR SPINE:**

**Technique:** T1 sagittal, fast spin T2 sagittal, T1 axial angled through disc spaces.

**Findings:** There is a bulging disc at L4-L5 with flattening of the dural sac and right greater than left foraminal encroachment. A bulging disc is also seen at L5-S1 with flattening of epidural fat. The conus is unremarkable. There is no central spinal stenosis. No disc herniations are seen. There is no sign of fracture. Anterior spondylosis at L4-L5 is seen. There is no sign of paraspinal mass.

**IMPRESSION:**

Bulging discs from L4 through S1, associated with bilateral foraminal narrowing at L4-L5.

Thank you for the courtesy of this referral.

\*\*\*\*\* Electronically Signed \*\*\*\*\*

09/06/06 18:16

Alan Greenfield, MD

Diplomate, American Board of Radiology

P.02/20

SEP-21-2006 14:22

## EXHIBIT I

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ABOURACAR JALLOH,

Plaintiff,

PHYSICIAN'S  
AFFIRMATION

-against-

THOMAS P. WENDEL,

Index No.: 07 Civ. 4091(NRB)

Defendant.

X

I, DINA NELSON, M.D., affirm the following under the penalties of perjury:

1. I am a physician duly licensed to practice medicine in the State of New York.
2. My offices are located at Med Care Health & Rehabilitation Services, P.C., 334 Grand Concourse, Bronx, NY 10451.
3. ABOURACAR JALLOH sustained personal injuries when he was involved in a motor vehicle accident on August 6, 2006. He received physical therapy treatments at my facility from August 10, 2006 through December 7, 2006. Physical therapy treatments consisted of electrical stimulation, massages, and the application of hot and cold packs, all to the lower back and neck.
4. On initial physical examination on August 10, 2006, patient presented with complaints of neck pain, and mid to low back pain, and frontal headaches. The patient was 42 years old and has no history of prior injuries.
5. Examination of the cervical spine revealed severe limitation in all planes with diffuse muscle spasm in the upper trapezius muscles, levator scapulae, and SCM and tenderness in the cervical paraspinal.
6. Examination of the thoracolumbar spine revealed tenderness in the lower thoracic spinous processes up to the upper lumbar spine. Flexion was limited to 50 degrees (90 degrees is normal<sup>1</sup>) and lateral flexion was limited to 10 degrees (25 degrees is normal).
7. I diagnosed: (1) cervical sprain/strain; (2) thoracolumbar sprain/strain; and (3) post traumatic headaches. I began the patient on a course of physical therapy treatments three times per week.

<sup>1</sup> American Academy of Orthopaedic Surgeons Standard

8. On examination of September 21, 2006, patient had continued complaints of neck pain and low back pain with complaints of sharp pain radiating down both legs. At that time, he had not returned to work as a taxi driver due to his neck and lower back pain.
9. Examination of the cervical spine revealed moderate restrictions in range of motion in all planes and bilateral trapezius and cervical paraspinal muscle spasm.
10. Examination of the lumbar spine revealed moderate restriction and flexion bilateral lumbar paravertebral spasm, and a positive straight leg raise bilaterally.
11. I reviewed x-ray films of the cervical spine which revealed straightening of lordosis. I reviewed an MRI of the cervical spine which revealed central disc herniations at C3-C4 and C5-C6 and bulging disc at C4-C5. I reviewed x-ray films of the lumbar spine which revealed mild degenerative changes at L2 and bulging disc at L4 through S1 and bilateral foraminal narrowing at L4-L5 and possible lumbosacral radiculopathy.
12. On November 2, 2006, the patient presented to me with complaints of cramping in his calf with severe sharp burning pain. This could be evidence of intermittent ~~claudication~~ ~~claudication~~. Examination of the cervical spine revealed a decrease in lateral rotation to 60 degrees bilaterally (80 degrees is normal), and lateral flexion to 20 degrees bilaterally (45 degrees is normal). There was also mild bilateral upper trapezius muscle spasm. There was also tenderness in the lower lumbar paravertebrals.
13. Based on a reasonable degree of medical certainty, as well as on the patient's history and clinical examinations, it is my opinion that a direct causal relationship exists between Mr. Jalloh's injuries as described above and the accident of August 6, 2006.
14. I, the undersigned, certify that the foregoing report is true to the best of my knowledge. I am a duly licensed physician in the State of New York and I hereby affirm under the penalties of perjury the contents of this report to be true.

Dated: New York, New York  
May 20, 2008



DINA NELSON, M.D.

AFFIRMATION OF MAILING

I am an attorney at law in the State of New York and am associate with the law firm of Budin, Reisman, Kupferberg & Bernstein, LLP, attorneys for the plaintiff in the above-captioned matter. I hereby affirm under oath that a true and correct copy of the within Notice of Cross Motion for Summary Judgment; Affirmation in Support of Cross-Motion and in Opposition to Defendant's Motion for Summary Judgment; Rule 56.1 Statement of Facts; Rule 56.1 Opposition to Movant's Statement of Facts; and Memorandum of Law in Support of Cross-Motion for Summary Judgment on the Issue of Liability and in Opposition to Defendant's Motion for Summary Judgment on the Issue of Threshold, were furnished on June 3, 2008 to opposing counsel by forwarding same by Federal Express Overnight Delivery, addressed as follows:

Law Offices of Harvey & Vandamme  
90 Broad Street  
Suite 2202  
New York, NY 10004  
(646) 428-2650

*Christina M. Rieker*  
CHRISTINA M. RIEKER

Index No. 07 Civ. 4091(NRB)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendant.

---

**NOTICE OF CROSS MOTION FOR SUMMARY JUDGMENT  
AFFIRMATION IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION  
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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**Budin, Reisman, Kupferberg & Bernstein, LLP**  
Attorneys for Plaintiff  
**112 Madison Avenue**  
**New York, New York 10016**  
**212-696-5500**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-X

ABOUBACAR JALLOH,

Index No.: 07 Civ. 4091(NRB)

Plaintiff,

ECF CASE

-against-

THOMAS P. WENDEL,

**RULE 56.1 STATEMENT OF FACTS**

Defendant.

Hon. Judge Naomi R. Buchwald

-X

Pursuant to Local Civil Rule 56.1(b) of the United States District Court for the Southern District of New York, the plaintiff, ABOUBACAR JALLOH, submits that there are no genuine issues of fact as to liability requiring a trial of the following material facts:

1. This is an action for personal injuries sustained by Aboubacar Jalloh in a motor vehicle accident on August 7, 2006.
2. The accident occurred at nearly midnight at the intersection of Jerome Avenue and West 182<sup>nd</sup> Street in the Bronx, New York. Both vehicles were traveling southbound on Jerome Avenue at the time of the accident (See Exhibit "B").
3. It is undisputed that Mr. Wendel's vehicle struck Mr. Jalloh's vehicle in the rear while Mr. Jalloh's vehicle was stopped at a red traffic light at the aforementioned intersection.
4. Mr. Wendel was coming from a concert on Roosevelt Island immediately prior to the accident, and on his way home to Connecticut, took a detour through his old neighborhood around the location of the accident (See Exhibit "D", pgs. 10-11).
5. Mr. Wendel told the responding police officers that he "rear ended the other car". (Exhibit "D", pg. 19).

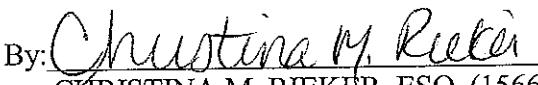
6. Mr. Wendel further told the responding police officers "I took my eyes off the road and I didn't see the car" (Ex. "D", pg. 19).

7. Mr. Wendel testified that, at the time of the accident, and immediately before, he "was just looking around." And was distracted by "the change in scenery since the last time I had been there." (Ex. "D", pg. 21).

8. Plaintiff asserts that there are no genuine issues of fact requiring a trial in this matter on the issue of liability based upon defendant, Thomas P. Wendel's statements, and plaintiff is therefore entitled to summary judgment on the issue of liability.

Dated: New York, New York  
June 3, 2008

Yours, etc.,  
Budin, Reisman, Kupferberg & Bernstein, LLP

By:   
CHRISTINA M. RIEKER, ESQ. (1566)

TO: Law Offices of Harvey & Vandamme  
Attorneys for Defendant  
THOMAS P. WENDEL  
90 Broad Street, Suite 2202  
New York, NY 10004  
(646) 428-2650

SOUTHERN DISTRICT OF NEW YORK

---

ABOUBACAR JALLOH,

Plaintiff,

-against-

THOMAS P. WENDEL,

Defendant.

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**RULE 56.1 STATEMENT OF FACTS**

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**Budin, Reisman, Kupferberg & Bernstein, LLP**  
Attorneys for Plaintiff  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-X

ABOUBACAR JALLOH,

Plaintiff,

Index No.: 07 Civ. 4091(NRB)

-against-

THOMAS P. WENDEL,

Defendant.

ECF CASE

**RULE 56.1 OPPOSITION TO  
MOVANT'S STATEMENT OF  
FACTS**

**Hon. Judge Naomi R. Buchwald**

-X

Pursuant to Local Civil Rule 56.1(b) of the United States District Court for the Southern District of New York, the plaintiff, ABOUBACAR JALLOH, submits that there are genuine issues of fact as to the severity of plaintiff's injuries requiring a trial of the following material facts:

1. This is an action for personal injuries sustained by Aboubacar Jalloh in a motor vehicle accident on August 7, 2006.
2. Mr. Jalloh was asked by the police who responded to the accident if he wanted to leave the scene in an ambulance. He responded, 'leave it for now'. (See plaintiff's EBT transcript, annexed to plaintiff's moving papers as Exhibit "G"). He was in pain, but did not appreciate the severity of his injuries. He also wanted to just go home and lie down (See plaintiff's Affidavit, annexed to plaintiff's papers as Exhibit "F").
3. There are no reported injuries to Aboubacar Jalloh in the Police Accident Report.
4. Aboubacar Jalloh received medical treatment from his treating physician, Dina Nelson, M.D. on August 10, 2006 and received physical therapy treatments three times per week for four months. Defendant offers the inadmissible, unaffirmed one page medical record indicating

that Mr. Jalloh told Dr. Nelson that he was working eight hours a day as a taxi driver. Plaintiff explains his work situation in his Affidavit. Mr. Jalloh states that he works only when he feels healthy enough to. He has not returned to work on a regular basis since the accident, but would like to when he feels able (See Exhibit "F"). Further, on February 8, 2008, he testified that in the last six months, he only worked about two months, total (See Exhibit "G", pgs. 12-13).

5. As of February 8, 2008, Mr. Jalloh testified that he could not kneel to pray, which he did five times per day, every day, prior to the accident. Mr. Jalloh must rub Ben-Gay on his neck and back every night before bed, so as not to wake up with severe pain and stiffness. He still suffers from severe neck and back pain and has yet to return to work on a regular basis. He looks forward to returning to work as soon as he feels able. However, Dr. McMahon found Mr. Jalloh's condition to be permanent and offered a poor prognosis for recovery. He found him unable to work (Ex. "E"). Mr. Jalloh is negatively affected by his injuries, as prayer is the most important thing in his life, and because of the pain with kneeling, he is distracted while doing so (Ex. "F" and "G").

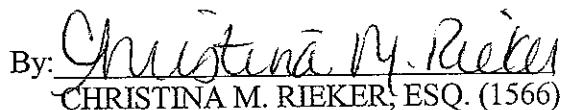
6. On April 2, 2008, Aboubacar Jalloh was examined by Robert S. April, M.D.

7. Plaintiff asserts that Aboubacar Jalloh did sustain a medically determined "serious injury" pursuant to New York Insurance Law §5102 that is causally related to the subject motor vehicle accident, and that defendant is not entitled to summary judgment dismissing the complaint.

8. On May 14, 2008, Aboubacar Jalloh was examined by Mark S. McMahon, M.D.

Dated: New York, New York  
June 3, 2008

Yours, etc.,  
Budin, Reisman, Kupferberg & Bernstein, LLP

By:   
CHRISTINA M. RIEKER, ESQ. (1566)

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